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## Free Trade, Economic Rights, and Displaced Workers: It Works if You Work It

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# FREE TRADE, ECONOMIC RIGHTS, AND DISPLACED WORKERS: IT WORKS IF YOU WORK IT

## I. INTRODUCTION

One-million, eight-hundred-thousand Bangladeshi workers depend on the textile and apparel industries for their livelihood.<sup>1</sup> These two industries aid the stability of Bangladesh's economy and provide incomes and independence for many Bangladeshi workers and their families, especially women who have experienced significant social improvement as a result of their employment.<sup>2</sup> This stability is in danger.<sup>3</sup> Free trade caused the majority of the textile and apparel markets to relocate to China, causing the world's demand for goods from Bangladesh to decrease dramatically.<sup>4</sup> The shift to China severely damaged Bangladesh's textile and apparel industries and consequently eradicated the majority of jobs that rely on these industries.<sup>5</sup> Eighty percent of the families of garment workers will likely plunge below the poverty line as the tex-

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1. UNITED NATIONS DEVELOPMENT PROGRAM, MAKING GLOBAL TRADE WORK FOR PEOPLE 181 (2003), *available at* [www.undp.org/dpa/publications/globaltrade.pdf](http://www.undp.org/dpa/publications/globaltrade.pdf) [hereinafter GLOBAL TRADE]. Although the textile and apparel industries are in fact separate industries, often dictated by different economic considerations, they are considered together in this Note. They are related industries and are affected similarly by the liberalization of trade. For an extensive analysis of the intrinsic differences in the economic structures of the apparel and textile sectors, see SHEILA PAGE, HOW DEVELOPING COUNTRIES TRADE: THE INSTITUTIONAL CONSTRAINTS 14 (1994).

2. See GLOBAL TRADE, *supra* note 1 (noting that there are 1.8 million workers in the garment industry, who are mostly "girls or young women who migrated from rural areas"). See also Garment Industry, [http://banglapedia.search.com.bd/HT/G\\_0041.HTM](http://banglapedia.search.com.bd/HT/G_0041.HTM) (last visited Nov. 27, 2006).

[T]he expansion of the [Ready Made Garments] industry has caused noticeable social changes by bringing more than 1.12 million women into labour force. The economic empowerment of these working girls/women has changed their status in the family . . . [and the] traditional patriarchal hegemony of the fathers, brothers and husbands. Most working women/girls can now choose when to get married or become mothers.

*Id.*

3. See GLOBAL TRADE, *supra* note 1 (noting the "potentially dangerous outcome" that may result from the changes in international trade).

4. See PIETRA RIVOLI, THE TRAVELS OF A T-SHIRT IN THE GLOBAL ECONOMY: AN ECONOMIST EXAMINES THE MARKETS, POWER, AND POLITICS OF WORLD TRADE 168 (2005) (noting that China has been able to produce goods at a lower cost than most other nations, and countries formerly importing from Bangladesh prefer lower costs and will now import from China).

5. *Id.*

tile workers, whose families rely on them for sustenance, lose their jobs.<sup>6</sup> Bangladesh has no protection for these displaced workers who are now or will become unemployed.<sup>7</sup>

Although Bangladesh and nations like it are suffering, the international community has increasingly supported the movement towards free trade.<sup>8</sup> Free trade provides nations access to formerly unavailable markets, and greater diversity in the market helps economic integration accelerate on a global scale.<sup>9</sup> Therefore, despite the international community's initial hesitation, the incipient growth free trade has encouraged confirms that collective global economic growth will persist if nations continue to ap-

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6. GLOBAL TRADE, *supra* note 1, at 181.

7. RIVOLI, *supra* note 4 (“[T]he closest thing to a safety net that Bangladesh has ever known was the secure market share provided by [the quota scheme].”). Without that protection, Bangladesh workers face unemployment difficulties. *Id.* at 167–68. Bangladesh is a particularly poor nation, has economic instability due to political instability and corruption, and is unable to provide assistance to displaced workers. See CIA, The World Factbook: Bangladesh, <https://www.cia.gov/cia/publications/factbook/geos/bg.html> (last visited Nov. 18, 2006). In fact, Bangladesh is considered one of the Least-Developed Countries (LDCs). For a list of the countries recognized by the U.N. as LDCs, see UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing Countries, <http://www.un.org/special-rep/ohrlls/ldc/list.htm> (last visited Nov. 18, 2006).

8. See Douglas A. Irwin, *Free Trade Agreements and Customs Unions*, in THE LIBRARY OF ECONOMICS AND LIBERTY: THE CONCISE ENCYCLOPEDIA OF ECONOMICS (2002), <http://www.econlib.org/library/Enc/FreeTradeAgreementsandCustomsUnions.html>, for a general account of nations' increasing acceptance of free trade, as demonstrated by their engaging in free trade agreements. Free trade is defined as “open and unrestricted import and export of goods without barriers, such as quotas or tariffs, other than those charged only as a revenue source, as opposed to those designed to protect domestic businesses.” BLACK'S LAW DICTIONARY (8th ed. 2004).

9. See GLOBAL TRADE, *supra* note 1, at 180. See also Alan S. Binder, *Free Trade*, in THE LIBRARY OF ECONOMICS AND LIBERTY: THE CONCISE ENCYCLOPEDIA OF ECONOMICS (2002), <http://www.econlib.org/library/enc/FreeTrade.html> (providing the example of how free trade makes it possible for nations like “Spain, South Korea, and a variety of other countries [which] manufacture shoes more cheaply than America can” to engage in trade with the United States, a economic situation that is possible only with free trade); SUNGJOON CHO, FREE MARKETS AND SOCIAL REGULATION: A REFORM AGENDA OF THE GLOBAL TRADING SYSTEM 12 (2003). World Merchandise Exports as a percentage of Gross Domestic Products were reported as 5.1 in 1850, rising to 7.1 in 1950, then to 22.4 in 1998. Evidence of rising global export percentages demonstrates that exports have accounted for a large portion of the income generated in the global economy. ANDREW G. BROWN, RELUCTANT PARTNERS: A HISTORY OF MULTILATERAL TRADE COOPERATION 1850–2000, at 8 (2003).

ply free trade principles to the market.<sup>10</sup> An open market is now a widely supported initiative.<sup>11</sup>

Liberalization may promote growth in the global economy, but the effects are positive only in the aggregate.<sup>12</sup> There are economies that gain and economies that lose.<sup>13</sup> Specifically, the benefits to one nation's

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10. See generally GLOBAL TRADE, *supra* note 1 (assessing the problems, benefits, and developments of free trade and globalization and offering suggestions on how to make the multilateral trade regime benefit all, and especially developing, nations). The preface of the document provides an overview of the potential benefit of free trade:

Trade can, and must, be made to work as an engine of growth and indeed of human development. What is needed to enable this is a serious, systematic effort to apply the lessons of history, which show that, with very few exceptions, today's rich countries in the past enjoyed many of the protections they now seek to deny developing countries, only dismantling them after growing wealthier and more powerful. It is also more important to ensure that the multilateral trade regime is better aligned with broader objectives of human development: helping poor people everywhere gain the tools, opportunities and choices to build a better life for themselves, their families and their communities.

*Id.* at xi. See also WORLD TRADE ORGANIZATION, UNDERSTANDING THE WTO (3d ed. 2005), available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.doc](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.doc) [hereinafter UNDERSTANDING THE WTO] (noting an observable connection between "freer trade" and economic growth). After the Second World War, "world economic growth averaged about 5% per year, a high rate that was partly the result of lower trade barriers. World trade grew even faster, averaging about 8% during the period." *Id.* at 14.

11. See BROWN, *supra* note 9, at 3. The liberalization of trade began when industrialization took root and inspired advances in technology, organization, and productive skills. The transportation of goods became less burdensome, physical barriers to trade dissipated, and the potential for exchange between areas far removed from each other began to grow. The freedom of movement drove economic growth in individual countries, and the integration of these growing markets accelerated on a global scale. See *id.*

12. See, e.g., Daniel A. Farber, *Economic Efficiency and the Ex Ante Perspective*, in THE JURISPRUDENTIAL FOUNDATIONS OF CORPORATE AND COMMERCIAL LAW 54, 59 (Jody S. Kraus & Steven D. Walt eds., 2000). An economic policy is evaluated on the basis of a cost benefit analysis. Specifically, changes are generally accepted where the "total benefits of a change outweigh the total costs, although some people may gain and others may lose." *Id.* See also Judith Goldstein, *International Institutions and Domestic Politics: GATT, WTO, and the Liberalization of International Trade*, in THE WTO AS AN INTERNATIONAL ORGANIZATION 133, 133 (Anne O. Krueger ed., 1998) [hereinafter INT. ORG.] ("Nations gain from trade in the aggregate, but those gains are not evenly distributed.").

13. See Jim Chen, *Epiphytic Economic and the Politics of Place*, 10 MINN. J. GLOBAL TRADE 1, 2 (2001) ("There are, in short, winners and losers."). "The pure theory tells us that when resources are efficiently allocated the winners will gain more than the losers lose." Joel R. Paul, *Do International Trade Institutions Contribute to Economic Growth and Development?*, 44 VA. J. INT'L L. 285, 301 (2003). Yet, it matters little to those that

economy may come at a significant expense to another nation's economy, as demonstrated by China's gains at the expense of Bangladesh's losses.<sup>14</sup> To compound the problem, the benefit to a nation's economy is often not evenly distributed within the nation.<sup>15</sup>

In the textile and apparel industries, the progression towards liberalization affords the most advantaged nations access to cheaper products while causing great losses to developing nations.<sup>16</sup> In developing nations, quotas and other protectionist measures controlled trade for decades, and these nations failed to diversify their industries in the midst of the protected quota age.<sup>17</sup> Most developing nations are now bound to the textile and apparel industries, and they are neither able to compete equally in the free market nor prepared to pursue new and diversified industries.<sup>18</sup>

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are losing their industries that the winners from liberalization gain more than they are losing. Chen, *supra*.

14. GLOBAL TRADE, *supra* note 1, at 178. See *supra* notes 4–5 and accompanying text for a description of China's gains and Bangladesh's losses.

15. See Michael Kinsley, *Free Trade but . . .*, WASH. POST, Jan. 9, 2004, at A17 ("Traditionally, the most troublesome thing about free trade . . . is the unequal distribution of its benefits. The whole country is better off, but there are winners and losers. Generally, the losers are lower income workers, whose jobs are the easiest to duplicate in less developed countries.").

16. See RIVOLI, *supra* note 4, at 165–68 (describing the greater access nations will have to low-cost goods from China and the resulting problems and loss of employment it will cause for developing nations). For example, "[m]ost large retailers plan to source their clothing from only five or six countries in the post-[quota] world, whereas they had been forced to find suppliers in more than 50 countries under the quota regime." *Id.* The quota system required retailers to purchase their goods from multiple countries in order to avoid tariffs, and the elimination of quotas allows retailers to meet all of their needs from the nations of their choice, which is most often the most efficiently producing nations, such as China. *Id.* This meant, however, that many developing nations lost their major export industries because they were unable to produce as cheaply as their competition. The liberalization of textile markets has also caused a loss to the textile manufacturers within developed nations, but overall, developed nations suffer far less than developing nations. See David Barboza & Elizabeth Becker, *Free of Quota, China Textiles Flood the US*, N.Y. TIMES, Mar. 10, 2005, at A5 (noting that lower priced textile products from Asian countries are also causing the American manufacturers to replace American made garments with Asian imports, thereby causing unemployment in America).

17. See RIVOLI, *supra* note 4, at 168.

18. See *id.* at 165–70 (describing the effects of the elimination of quotas on developing nations such as Bangladesh and Cambodia and the inability of these nations to compete with China in the open market). Pursuing new industries requires investment in the new industry, and the capital often comes from foreign investors. However, it is difficult for developing nations to make a risky investment seem appealing to investors when the nation's economic or political environment is unstable. For example, economic structural adjustment and political instability will discourage foreign investment, even where labor is cheap. "Developing nations can attract foreign investment and reduce the cost of fi-

As a country loses the majority of its export industries to more efficient manufacturing nations, millions of workers within the vanishing industries lose their jobs, and there is nothing in place to lessen the burden felt by these workers.<sup>19</sup> This inflexibility threatens the preservation of developing nations' economies and the well-being of their citizens.

The international community's failure to consider and compensate for the occurrence of displaced workers demonstrates the instability of the community's dedication to, and recognition of, the legally enforceable economic right to work.<sup>20</sup> This right provides a guarantee to displaced workers that their nation's government will consider their needs in economic planning. The right to work of displaced workers cannot be ignored in this most vital time as nations pursue economic integration in the open market. Nations must consider economic rights and adequately provide for these rights as they adjust to the free market. Part II of this Note examines the theory of liberalization and the history of the deregulation of the textile and apparel industries. Part III examines the presence of the economic right to work in international law, the right's enforceability, and its capacity to protect displaced workers. Part IV briefly examines current attempts to coordinate globalization and economic development and the inability of global thinking to consider the plight of individuals. Part V proposes new negotiations within the World Trade Organization (WTO) to address additional consideration for the economic rights of displaced workers while maintaining the integrity of free trade and the pursuit of liberalization.

## II. FREE TRADE, DEREGULATION, AND DISPLACED WORKERS

### *A. The Theory of and Support for Liberalization: Economically Sound but Is It Humane?*

The free trade doctrine suggests that nations achieve the most efficient economic balance when all nations mutually agree to liberalize trade consistently, removing prohibitions or restrictions such as regulatory

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nancing private power projects by stabilizing their economic, political, and legal environments." William M. Stelwagon, *Financing Private Energy Projects in the Third World*, 37 CATH. LAW. 45, 68 (1996).

19. Paul Magnusson, *Where Free Trade Hurts*, BUS. WK. ONLINE, Dec. 15, 2003, [http://www.businessweek.com/magazine/content/03\\_50/b3862007.htm](http://www.businessweek.com/magazine/content/03_50/b3862007.htm).

20. See Krishna Rapanagunta, *Economic Rights as Human Rights*, INDIA TOGETHER, Jan. 2004, <http://www.indiatogether.org/2004/jan/hrt-ecorights.htm> (criticizing the international community's failure to recognize individuals' economic rights in light of the changes to the global economy and the vast drop in employment within developing countries).

quotas,<sup>21</sup> self-imposed restrictions due to political or ideological differences,<sup>22</sup> cultural preferences,<sup>23</sup> or irreconcilable trade policies.<sup>24</sup> A nation

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21. See CHO, *supra* note 9, at 27 (explaining that the original document instituting free trade was “clear and unambiguous in prohibiting quantitative restrictions such as quotas”).

22. See, e.g., *International Trade*, in *ENCYCLOPEDIA OF BUSINESS AND FINANCE*, Oct. 17, 2006, <http://business.enotes.com/business-finance-encyclopedia/international-trade> (explaining that a nation can experience shortages if it discriminates on the basis of ideological differences). “[S]elf-imposed trade restrictions created a shortage of products that could not be produced among [ideologically acceptable nations], making the overall quality of life . . . substantially lower.” *Id.*

23. See, e.g., *Fast Facts 2006: Foreign Trade Barriers 1*, [http://www.exportvirginia.org/FastFacts\\_2006/FF%20Issues%20Foreign%20Barriers%2006.pdf](http://www.exportvirginia.org/FastFacts_2006/FF%20Issues%20Foreign%20Barriers%2006.pdf) [hereinafter *Fast Facts*] (“Examples of trade barriers range from government-instituted tariffs to cultural preferences.”). For a discussion of trade restrictions based on cultural preferences, see also Richard P. Nielsen, *Cultural-Economic Nationalism and International Trade Policy*, 4 *ACAD. OF MGMT. REV.* 449, 449 (1979) (“Cultural-economic nationalism is affecting government and business policy toward international trade. Trade in some products and services is being restricted because they are considered foreign threats to the domestic culture.”).

24. Irreconcilable trade policies impede a nation’s willingness to trade, and this unwillingness is an unwanted trade barrier.

Trade barriers have a negative effect on exporters because they interfere with the normal supply and demand and make international trade more complicated. They also negatively impact importers and ultimately consumers since they interfere with competitive sourcing which can result in higher prices. The global trend in recent years has been to eliminate as many trade barriers as possible.

*Fast Facts*, *supra* note 23. In comparison, liberal trade policies—policies that allow the unrestricted flow of goods and services regardless of particular policies—sharpen competition, motivate innovation, and breed success. See UNDERSTANDING THE WTO, *supra* note 10, at 14.

This notion of unrestricted trade as the most beneficial method for pursuing economic integration is reflected in Article XI of GATT, an agreement “designed to provide an international forum that encouraged free trade between member states by regulating and reducing tariffs on traded goods and by providing a common mechanism for resolving trade disputes.” General Agreement on Tariffs and Trade, <http://www.ciesin.org/TG/PI/TRADE/gatt.html> (last visited Nov. 18, 2006). For the full text of GATT, see General Agreement on Tariffs and Trade, art. XI, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, available at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) [hereinafter GATT].

Notably, some have argued that nations can still benefit from unilateral free trade (the reduction of barriers by individual nations), rather than multilateral or bilateral free trade. See, e.g., James K. Glassman, *The Blessings of Free Trade* (May 1, 1988) (CATO Institute Briefing Paper no. 1), available at <http://www.freetrade.org/pubs/briefs/tpb-001.html> (“Jagdish Bhagwati, who is the Arthur Lehman Professor of Economics at Columbia University, points out that Hong Kong and Singapore are conspicuous unilateral free traders, as is New Zealand. Those countries have done exceptionally well economi-

is consequently best served if it specializes in and exports what it produces most efficiently compared to other producing nations.<sup>25</sup> Similarly, the nation must import what it produces least efficiently.<sup>26</sup>

Many opponents of free trade, specifically free trade through the WTO, cite the growing costs to workers and the potential for detrimental effects on the economies of developing nations as reasons not to pursue liberalization.<sup>27</sup> In the textile and apparel industries, liberalization is particularly

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cally.”); Irwin, *supra* note 8 (“While virtually all economists think free trade is desirable, they differ on how best to make the transition from tariffs and quotas to free trade. The three basic approaches to trade reform are unilateral, multilateral, and bilateral.”).

25. BROWN, *supra* note 9, at 18.

26. *Id.* As Brown explains, all countries, including the poorest, have human, industrial, natural, and financial assets, which they can use to produce goods and services for their domestic markets and overseas. Economics tells us that we can benefit when these goods and services are traded. Simply put, the principle of “comparative advantage” says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best. *Id.* at 19. It is a comparative, not absolute, advantage. Therefore, one country may be most efficient at producing every good but will only produce goods that other countries cannot produce. For example, “a country may import certain products even though it could produce them more efficiently than the country of origin if the importing country has a comparatively greater advantage in producing some other specialty.” Matthew Tuchband, *The Systemic Environmental Externalities of Free Trade: A Call for Wiser Trade Decisionmaking*, 83 GEO. L.J. 2099, 2102 (1995).

27. See RIVOLI, *supra* note 4, at 149–51. Some in opposition to free trade consider many factors affecting nations, including “a number of negative factors on civil society.” *Id.* at 149. These opponents often find that economists are viewing the situation narrowly when they determine that free trade benefits nations. Economists “judge policies by their effects on national wealth and income, or ‘global welfare,’ and it is inarguably true that this metric supports free trade over most, if not all, forms of trade protection.” *Id.* Yet, the opponents to free trade argue that it is “not about the best *economic* policy but instead about economic policy versus all of the other factors that weigh on policymakers’ decisions. It is easy to be outraged over the dominance of special interest politics over sound economic policy . . .” *Id.*

Thus, some opponents to free trade are unwilling to accept a slight decrease in price as a reason to pursue free trade if it means the elimination of jobs. *Id.* at 150–51 (“[W]e can buy our T-shirts for 25 cents less, so on average we are richer, but at what cost?”). The slight economic advantage in price is not enough, and the bigger concerns are localized issues or detrimental effects, such as the fact that “some local workers, companies, and communities are the losers” in this game. *Id.*

For example, one group, the Global Exchange, which is in strong opposition to free trade through the WTO, has argued that the “WTO would like you to believe that creating a world of ‘free trade’ will promote global understanding and peace. On the contrary, the domination of international trade by rich countries for the benefit of their individual interests fuels anger and resentment that make us less safe.” Global Exchange, *Top Reasons to Oppose the WTO*, <http://www.globalexchange.org/campaigns/wto/OpposeWTO.html> (last visited Nov. 18, 2006). The Global Exchange has also argued that



difficult because, like Bangladesh, many developing nations have no safeguards in place to protect their share of the shifting market and few other industries that can provide economic stability.<sup>28</sup> Other economic and environmental costs include greater consumption of natural resources, growing income inequality, and the decline of wages for less educated workers.<sup>29</sup> One important political cost is the subjugation of member nations' territorial sovereignty to the international policies gov-

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"WTO rules put the 'rights' of corporations to profit over human and labor rights. The WTO encourages a 'race to the bottom' in wages by pitting workers against each other rather than promoting internationally recognized labor standards." *Id.* They have further argued:

Free trade is not working for the majority of the world. During [a] period of rapid growth in global trade and investment (1960 to 1998) inequality worsened both internationally and within countries. The UN Development Program reports that the richest 20 percent of the world's population consume 86 percent of the world's resources while the poorest 80 percent consume just 14 percent.

*Id.* The Global Exchange seeks fair trade rather than free trade as a means for promoting human development. See Global Exchange, <http://www.globalexchange.org/campaigns/fairtrade> (last visited Nov. 27, 2006).

28. See *Bangladesh: WTO Hails Liberalization Initiatives*, FIBRE2FASHION, Sept. 29, 2006, [http://www.fibre2fashion.com/news/daily-textile-industries-news-newsdetails.aspx?News\\_id=24006](http://www.fibre2fashion.com/news/daily-textile-industries-news-newsdetails.aspx?News_id=24006).

[Bangladesh's] over-dependence on the exports of readymade garments . . . is fraught with danger as it [faces] the elimination of quotas. . . . Bangladesh export to US and European Union member countries constitutes 78 percent which is a high risk game. Both organizations have recommended the diversification of the exportable items as well as the markets. It further asks [the] Government to fasten the privatization process of the private companies."

*Id.*

For information regarding other nations' dependence, see RIVOLI, *supra* note 4, at 167–68 (describing the effects of nations' reliance on the quota scheme and the problems they will face as the textile industry shifts to China, leaving them with few options). "Textile and apparel exports comprised more than half of manufacturing exports for a dozen countries, including Bangladesh, Mauritius, Honduras, and Sri Lanka, where the industries also provide the largest number of manufacturing jobs." *Id.* at 167. See also, e.g., Kevin C. Kennedy, *The Incoherence of Agricultural, Trade, and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa's Cotton Farmers*, 14 KAN. J.L. & PUB. POL'Y 307, 345 (2005) (arguing that the sub-Saharan nations are at a disadvantage because limited availability and high costs of yarn prevent diversification and there is no other industry to pursue).

29. Robert E. Scott, *The High Price of 'Free' Trade: NAFTA's Failure Has Cost the United States Jobs Across the Nation* 8 (Economic Policy Institute, Briefing Paper No. 147, Nov. 17, 2003), available at [http://www.epinet.org/content.cfm/briefingpapers\\_bp147](http://www.epinet.org/content.cfm/briefingpapers_bp147) (referring to the wage discrepancies between educated and non-educated workers after the implementation of NAFTA).

erning the WTO.<sup>30</sup> Consequently, many individuals concerned with the costs of trade liberalization, such as textile company owners or human rights activists, work hard to maintain quotas and regulatory schemes.<sup>31</sup>

Nevertheless, support for free trade endures. The majority of the international community supports the fundamental proposition that the “substantial benefits [that] arise from the free exchange of goods between countries . . . ha[ve] not been overshadowed by the limited scope of various qualifications and exceptions.”<sup>32</sup> The commonly held belief is that the net gains to the global economy are a substantial benefit and justify any losses from the pursuit of trade liberalization.<sup>33</sup> Advocates assert that affected nations, which experience economic loss, will only temporarily decline and will eventually find an industry in which they can efficiently produce.<sup>34</sup> Advocates also argue that the economic process of liberalization will ultimately aid the economic stability of nations, such as Bangla-

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30. See Frieder Roessler, *Diverging Domestic Policies and Multilateral Trade Integration*, in 2 FAIR TRADE AND HARMONIZATION: PREREQUISITES FOR FREE TRADE? 21, 37 (Jagdish Bhagwati & Robert E. Hudec eds., 1996) [hereinafter FAIR TRADE]. Critics argue that the WTO provisions subject member states’ domestic policies to the international policies within the WTO. *Id.* The WTO is the international organization governing world trade. See World Trade Organization, <http://www.wto.org> (last visited Oct. 15, 2006), for an extensive explanation of the rules governing member nations.

31. See RIVOLI, *supra* note 4, at 161.

32. DOUGLAS A. IRWIN, *AGAINST THE TIDE: AN INTELLECTUAL HISTORY OF FREE TRADE* 8 (1997).

33. See Robert Murphy, *People Can Just Get Along*, MISES.ORG DAILY ARTICLES, Dec. 6, 2004, <http://www.mises.org/story/1684> (discussing how the benefits of free trade outweigh the negatives). Change, such as that accompanying free trade, may cause “short-term pain for some groups . . . . Yet in the long run everyone benefits from cooperation. We must abandon economic sophisms and recognize the obvious truth that political freedom, smarter workers, and better technology are cause for celebration, not fear.” *Id.* See also UNDERSTANDING THE WTO, *supra* note 10. The WTO asserts that open trading is supported by “the experience of world trade and economic growth since the Second World War” because there is a “definite statistical link between freer trade and economic growth.” *Id.* at 14.

Furthermore, all nations stand to eventually gain because “[a] country does not have to be best at anything to gain from trade. [They gain because of the] comparative advantage.” *Id.* at 15. See also *supra* note 10 and accompanying text. For some of the benefits in the United States, see U.S. Chamber of Commerce, Free Trade Agreements, <http://www.uschamber.com/issues/index/international/fta.html> (last visited Nov. 1, 2006) (arguing that Free Trade Agreements benefit “U.S. businesses, workers, and consumers in significant ways”).

34. BROWN, *supra* note 9, at 19. Developing nations will be able to provide developed nations with the products that the developed nations still need but are too busy to produce. *Id.*

desh, which are presently experiencing detrimental economic effects from the movement towards free trade.<sup>35</sup>

With the expectation that all nations will ultimately benefit, the United States and many other nations recognize and embrace the elimination of quotas and the movement towards trade liberalization as the most effective way to stimulate both the global economy and the economies of individual nations.<sup>36</sup> Currently, over 140 WTO member nations are actively engaged in the movement towards liberalization.<sup>37</sup>

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35. See Herman E. Daly, *From Adjustment to Sustainable Development: The Obstacle of Free Trade*, in *THE CASE AGAINST "FREE TRADE": GATT, NAFTA, AND THE GLOBALIZATION OF CORPORATE POWER* 121, 125–26 (1993) (“[E]conomists have proved that free trade between high-wage and low-wage countries can be mutually advantageous thanks to comparative advantage.”). Under the principle of comparative advantage:

[C]ountries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best—producing automobiles—and export the product to B. B should still invest in what it does best—making bread—and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade.

UNDERSTANDING THE WTO, *supra* note 10, at 15. Furthermore, nations will eventually, if gradually, benefit from the comparative advantage, even if they are initially negatively affected. *Id.* at 14 (“[A country could] become uncompetitive in some goods or services as its economy develops. However, with the stimulus of an open economy, the country can move on to become competitive in some other goods or services. This is normally a gradual process.”).

For example, Bangladesh is already experiencing benefits. “Poorer nations like Bangladesh and India, which have had no quotas on their exports since January, are expected to continue to increase their shipments.” James Kanter & Keith Bradsher, *A Return to Quotas; Limits on Textiles Could Push China Toward Making Upscale Goods*, N.Y. TIMES, Nov. 9, 2005, at C2. As China floods the market, its labor costs will rise, and Bangladesh will thereby become the cheapest exporter. *See id.*

36. Many nations are engaged in free trade agreements, demonstrating the dedication to free trade for the international market. *See, e.g.*, North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 289 (1993); Canada-United States Free Trade Agreement, Jan. 2, 1988, 27 I.L.M. 281 (1987). The most “striking” evidence of commitment has been the “collective decision of some 120 countries to negotiate a massive expansion of GATT in the 1986-94 Uruguay Round negotiations.” Robert E. Hudec, *GATT Legal Restrictions on the Use of Fair Trade Measures Against Foreign Environmental Practices*, in *FAIR TRADE*, *supra* note 30, at 59, 108.

37. *See* World Trade Organization, Understanding the WTO: The Organization; Members and Observers, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) [hereinafter *Members and Observers*] (last visited Nov. 21, 2006). As of December 2005, there were 149 member nations and 32 observer states in the WTO. The observer states have not acceded to the WTO, but must start negotiations regarding accession within five years of becoming an observer nation. *Id.*

*B. The Pursuit of Liberalization in the Textile and Apparel Industry*

Free trade began to take root after the Second World War when global economic integration was foremost on the political and economic agenda.<sup>38</sup> Pursuing a free market was considered the most viable manner in which the world's nations could obtain international economic cooperation, a goal many hoped would repair the international community.<sup>39</sup> Towards that end, in 1948, twenty-three nations drew up the General Agreement on Tariffs and Trade (GATT) to serve as a list of negotiated trade concessions and rules of economic conduct for participating nations.<sup>40</sup> In accordance with the goals established under GATT, nations began to eradicate the legacy of protectionist measures governments had instituted.<sup>41</sup> Many of the participating nations agreed to pursue privatization,<sup>42</sup> specific deregulations,<sup>43</sup> economic structural adjustment,<sup>44</sup> promotion of foreign investment,<sup>45</sup> and a multitude of trade agreements.<sup>46</sup>

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38. The global free market was important to the post-war community because economic protectionism in Europe was blamed for the outbreak of the Second World War. CHO, *supra* note 9, at 2.

39. *Id.*

40. GATT, *supra* note 24, preamble. GATT also works in conjunction with the World Bank and the International Monetary Fund. See The IMF, World Bank and WTO, <http://www.stwr.net/content/view/717> (last visited Nov. 18, 2006). For a discussion regarding the changing roles of international financial banks and intergovernmental development institutions in a globalized world economy, see Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT'L L. & POL. 243 (2000).

41. See World Trade Organization, Understanding the WTO: The Agreements; Textiles: Back in the Mainstream, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm) (last visited Nov. 21, 2006) [hereinafter *Mainstreamed Textiles*].

42. Privatization is the process of transferring property from public ownership to private ownership and transferring the management of a service or activity from the government to the private sector. A government can continue "to finance provisions [while using] private suppliers instead of government-owned enterprises." John Burton, *Privatization and Regulation in the USA and the UK: Some Comparisons and Contrasts*, in DEREGULATION AND PRIVATIZATION IN THE UNITED STATES 148, 148 (Paul W. MacAvoy ed., 1995).

43. Deregulation is a process through which governments remove restrictions on businesses in order to encourage efficient market operations. Deregulation, however, differs from liberalization. A liberalized market can include regulations to protect consumers' rights. See Stacy K. Weinberg, *Liberalization of Air Transport Time for the EEC to Unfasten Its Seatbelt*, 12 U. PA. J. INT'L BUS. L. 433, 433 (1991) ("Liberalisation means the reduction of constraints imposed upon the existing actors in the marketplace . . . whereas deregulation refers to the abolition of all restrictions dominating the . . . marketplace, thus providing free access.") (quoting Reports of Conferences, 12 AIR L. 303, 306 (1987) (Fourth Lloyd's of London Press International Aviation Law Seminar, Algarve, Portugal, Oct. 11–16, 1987)). Critics of deregulation argue that regulation secures efficient allocations of resources. See, e.g., Stephen Dempsey, *Market Fail-*

To isolate and address the unique concerns raised by the liberalization of the textile and apparel industries, the GATT Committee on Textiles created the Multifibre Arrangement (MFA).<sup>47</sup> The MFA, in opposition to

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*ure and Regulatory Failure as Catalysts for Political Change: The Choice Between Imperfect Regulation and Imperfect Competition*, 46 WASH. & LEE L. REV. 1, 30 (1989). Notably, deregulation and privatization are neither the same nor mutually exclusive. "There is a tendency to confuse privatization and deregulation as the same issue when indeed privatization is often accompanied by an increase in regulation." IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 11 (1992).

44. Structural adjustment is a term used by the IMF to refer to the recommended changes for developing countries. These include internal changes, notably privatization and deregulation, as well as external changes, such as the reduction of barriers to trade. The World Bank defines structural adjustment as a "process whereby the national economy is opened by means of the depreciation of the real exchange rate. This is accomplished through a combination of demand-side and supply-side policies, with or without a nominal devaluation." SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 20 (2001) (quoting LIONEL DEMERY, MARCO FERRONI, CHRISTIAN GROOTAERT & JORGE WONG-VALLE, *UNDERSTANDING THE SOCIAL EFFECTS OF POLICY REFORM, A WORLD BANK STUDY*: WASHINGTON DC (1993)).

45. Advocates of free trade argue that direct foreign investment is beneficial because:

[I]nvestment in LDC's brings capital influx and new infrastructure and possibly new industries, which in turn expand and diversify the economic base of the host country. Investments tend to bring in long-term financial commitments, an increase in the knowledge base of the host country, new technologies, job growth, and an increase in the capabilities of the host country's management and marketing efficiencies.

Patrick J. Donovan, *Creeping Expropriation and MIGA: The Need for Tighter Regulation in the Political Risk Insurance Market*, 7 GONZ. J. INT'L L. 3, 3 (2003).

Many economists traditionally assumed, however, that "foreign ownership [was] necessarily harmful to development" and that developing countries were "powerless to determine the way in which foreign firms exploit their productive resources." MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 336 (1995). "When confronted with 'capital inflow' problems, countries have sometimes restricted foreign investment. These capital controls tend to create important inefficiencies and to lose their effectiveness in the long run. They cannot substitute for consistent macroeconomic policies and necessary structural, regulatory and institutional reforms." ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *OPEN MARKETS MATTER: THE BENEFITS OF TRADE AND INVESTMENT LIBERALIZATION* 28 (1998). It is also important to promote, rather than restrict, foreign investment because of a reliance similar to that which results from the quota scheme. Controlling capital "may give the authorities a false sense of security and distract them from their essential task of maintaining sound fiscal and monetary policies and a realistic exchange rate and of pursuing reforms." *Id.*

46. Anne O. Krueger, *Introduction* to INT. ORG., *supra* note 12, at 7.

47. *Mainstreamed Textiles*, *supra* note 41. The MFA was created in 1974, developing out of prior international agreements on the textile trade. The MFA provided a "frame-

GATT's general thrust towards liberalization, guaranteed a percentage of the textile and apparel markets to developing nations.<sup>48</sup> To create the guarantee, the MFA provided "selective quantitative restraints when surges in imports caused, or threatened to cause," damage to a nation's domestic industry.<sup>49</sup> Textile manufacturing nations insisted on the MFA export quotas because the guaranteed share of the market provided security for their nation's economy.<sup>50</sup>

Many developing nations, however, are losing their guaranteed share of the market.<sup>51</sup> Liberalization grew popular as rich, developed nations experienced increased welfare, and these nations sought further global integration.<sup>52</sup> To further promote widespread liberalization, manufactur-

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work for bilateral agreements or unilateral actions for countries whose domestic industries were facing serious damage from rapidly increasing imports." *Id.* Liberalization of the textile industry was particularly difficult because of political pressures to maintain safeguards. *See* RIVOLI, *supra* note 4, at 134. Furthermore, developing nations participated in greater number in drafting the MFA, and they resisted the change, knowing they had few options if the textile industry was lost. NIELS BLOKKER, *INTERNATIONAL REGULATION OF WORLD TRADE IN TEXTILES* 337 (1989).

48. Press Brief, The World Trade Organization, Textiles, [http://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/textiles.htm](http://www.wto.org/english/thewto_e/minist_e/min96_e/textiles.htm) (last visited Oct. 15, 2006) [hereinafter Press Brief, WTO]. Although administered by the GATT Committee on Textiles, the MFA stands outside GATT rules "because it permitted the imposition of quantitative restrictions on textiles without Most Favored Nation ('MFN') treatment." Alice J. H. Wohn, *Towards GATT Integration: Circumventing Quantitative Restrictions on Textiles and Apparel Trade Under the Multi-Fiber Arrangement*, 22 U. PA. J. INT'L ECON. L. 375, 394 (2001). "The [MFA] restrictions on textiles and apparel imports are in direct contradiction to two basic principles of GATT, including nondiscrimination through Most-Favored Nation treatment, and the general proscription against quantitative restrictions." *Id.* at 419 n.99 (citations omitted). The GATT provisions generally prohibited bilateral quota arrangements and discrimination against specific trading partners that were present in the MFA. *See, e.g.*, GATT, *supra* note 24, art. XIII (codifying Non-discriminatory Administration of Quantitative Restrictions). The foundational GATT provisions exhibited a preference for customs tariffs instead of restrictions on import quantities. *Mainstreamed Textiles*, *supra* note 41.

49. Press Brief, WTO, *supra* note 48. *See also Mainstreamed Textiles*, *supra* note 41.

50. RIVOLI, *supra* note 4.

51. *See id.* at 138 (describing how the phase out of the MFA, and the resulting open market, causes the elimination of nations' guaranteed share of the market). *See also* Press Brief, WTO, *supra* note 48 (describing the phase out and how it will eventually eliminate all quotas).

52. The original intent of the quotas was to "protect rich country industries by limiting imports from poor countries," but when it was clear that freer trade was more beneficial, nations sought liberalization. *See* RIVOLI, *supra* note 4, at 165-68. Nations were influenced by economists who determined that the quota system would not generate as many economic benefits as free trade. For a description of the economists' position, *see id.* at 149. For examples of the increase in acceptance of free trade, *see* Irwin, *supra* note 8 (noting the increase in nations seeking trade agreements); Ranjit Goswami, *The Re-*

ing nations collectively created the WTO on December 31, 1994.<sup>53</sup> The WTO drafted the Agreement on Textiles and Clothing (ATC), therein constructing a ten-year liberalization phase out of the MFA provisions and an integration of restricted products into GATT rules.<sup>54</sup> In order to integrate imported products into the GATT framework, the ATC required importing nations to enlarge existing quotas annually and concurrently.<sup>55</sup>

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*sponsibility of Being an American*, OHMYNEWS, Nov. 6, 2006, [http://english.ohmynews.com/ArticleView/article\\_view.asp?menu=A11100&no=327216&rel\\_no=1&back\\_url=](http://english.ohmynews.com/ArticleView/article_view.asp?menu=A11100&no=327216&rel_no=1&back_url=) ("The world has increasingly accepted American values in terms of free market, free trade, . . . basic human rights, etc."); *Members and Observers*, *supra* note 37 (noting that there are currently 149 members participating in free trade under the WTO).

Nations easily accepted liberalization because it allows retailers to seek clothing from the cheapest country, rather than obtaining required amounts from various nations under the quota scheme. *See* RIVOLI, *supra* note 4, at 165. *See also supra* note 16 and accompanying text.

53. Created at the Uruguay Round of Multinational Trade Negotiations to replace GATT, the WTO is one of the few international economic institutions that place legally binding obligations on their members. *See* Richard Blackhurst, *The Capacity of the WTO to Fulfill Its Mandate*, in INT. ORG., *supra* note 12, at 31, 32 (noting that, in comparison, the IMF is not binding). The Uruguay Round is the most recent round in negotiations. The first was in Geneva in 1947, and each subsequent round has made trade more liberal. *See* World Trade Organization, *Understanding the WTO: Basics; The GATT Years: From Havana to Marrakesh*, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm#rounds](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm#rounds) (last visited Nov. 21, 2006).

In the early years, the GATT trade rounds concentrated on further reducing tariffs. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. [Then, t]he eighth, the Uruguay Round of 1986–94, was the last and most extensive of all. It led to the WTO and a new set of agreements.

*Id.*

54. *See* Press Brief, WTO, *supra* note 48. The ATC transitional agreement's main elements are product coverage, the program of liberalization, the treatment of existing trade restrictions, the application of transitional safeguards, the fulfillment of commitments under GATT rules, the supervision of ATC implementation, and dispute settlement. World Trade Organization, Textiles Monitoring Body (TMB), *The Agreement on Textiles and Clothing*, [http://www.wto.org/english/tratop\\_e/texti\\_e/texintro\\_e.htm#MFA](http://www.wto.org/english/tratop_e/texti_e/texintro_e.htm#MFA) (last visited Nov. 27, 2006) [hereinafter Textiles Monitoring Body].

55. Textiles Monitoring Body, *supra* note 54. The WTO textiles agreement planned for the textile industry's integration into GATT by the following four steps: 1) on January 1, 1995, members would integrate no less than 16% of their total volume of 1990 imports; 2) on January 1, 1998, an additional 17% would be integrated; 3) on January 1, 2002, another 18%; 4) on January 1, 2005, the remaining percent, a maximum 49%, would be integrated. *Id.* The four WTO nations which maintained import restrictions were Canada, EC, Norway, and the United States. *Id.* The rules under GATT eliminated prohibitions or restrictions, "other than duties, taxes or other charges, whether made ef-

As of the start of 2005, member nations should have removed all quotas, thereby finalizing the integration process.<sup>56</sup>

*C. The Market Effect of the MFA Phase Out: Developing Nations Compete for the Market*

As quotas were phased out, and the amount an importing nation could demand increased, China took the opportunity to flood the market with cheaper goods.<sup>57</sup> With its almost “limitless supply of cheap labor and its capacity for high-volume production[,]”<sup>58</sup> it is clear that China is and will continue to be the leading exporter of textiles and apparels.<sup>59</sup> Fearing China’s economic domination in this sector, the international community

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fective through quotas, import or export licenses or other measures.” GATT, *supra* note 24, art. XI. See *id.* for a list of full restrictions.

56. See Angela Hale, *Phasing Out the Multi Fibre Arrangement: What Does It Mean for Garment Workers?* (Woman Working Worldwide, Working Paper, 2000), available at [http://www.poptel.org.uk/women-ww/phase\\_out\\_mfa.htm](http://www.poptel.org.uk/women-ww/phase_out_mfa.htm). See also Press Brief, WTO, *supra* note 48. Through the integration process, the textiles and clothing products covered by the provisions of the ATC will progressively shrink, and the number of quotas will diminish, until the ATC’s elimination on January 1, 2005. *Id.* There are, however, some exceptions. Before China was allowed to join the WTO in 2001, Clinton administration officials insisted that the United States be allowed to “impose new limits on Chinese textile and clothing imports from 2005 through 2008,” and China agreed to the restrictions. Keith Bradsher, *China Relents and Promises Textile Tariffs*, N.Y. TIMES, Dec. 13, 2004, at A1 [hereinafter Bradsher, *China Relents*]. As of October 2005, Washington limited the growth in imports from Chinese pants, blouses and other textile goods to 7.5% a year. *U.S. and China End Textile Talks Without Reaching an Agreement*, N.Y. TIMES, Oct. 14, 2004, at C3. For an evaluation and criticism of the US agreement with China, see Tracy Elizabeth Dardick, *The US–China Safeguard Provision, the GATT, and Thinking Long Term*, 6 CHI. J. INT’L L. 467, 473 (2005).

57. See, e.g., RIVOLI, *supra* note 4, at 166.

58. James Brooke, *A Year of Worry for Cambodia’s Garment Makers*, N.Y. TIMES, Jan. 24, 2004, at C1.

59. See CHINA’S DEVELOPMENT MIRACLE: ORIGINS, TRANSFORMATIONS, AND CHALLENGES 124 (Alvin Y. So ed., 2003). “The vast pools of rural migrant labor provide a plentiful supply of cheap labor in sustaining China’s urban economic boom.” *Id.* The workers “are flexible, able and willing to move quickly into new growth areas.” *Id.* The migrant workers are also willing to work for less money, for more hours, and in unsafe conditions with minimal protection. *Id.* Due to China’s unparalleled labor force, from 1990 to 2004, China’s share in the world’s exports of textiles jumped from 6.9% to 17.2%. World Trade Organization, International Trade Statistics 2005: Trade by Sector 2005, Table IV.74, [http://www.wto.org/english/res\\_e/statis\\_e/its2005\\_e/its05\\_bysector\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2005_e/its05_bysector_e.htm) [hereinafter International Trade Statistics 2005]. China was second only to the European Union for the highest percentage share in the world’s exports. Additionally, the rise in China’s share was nearly twice as great as all but one of the other top ten importer/exporters of clothing for countries within the WTO. *Id.*



opposed China's rapid success.<sup>60</sup> In exchange for WTO membership, China relented to Western pressure and agreed to endure additional American quotas until 2008 and announced that it would impose tariffs on textile exports in order to temper exporting.<sup>61</sup> Even so, China's domination and yearly growth in control over the market remains superior to all other nations.<sup>62</sup>

As China gains a greater share of the market, competing nations' economies suffer.<sup>63</sup> China's supremacy has caused the demand for textiles and apparel from other nations to reduce dramatically, thereby injuring the domestic markets of China's trading partners.<sup>64</sup> The demand for goods from China will continue to grow, further reducing the demand for goods from other nations.<sup>65</sup> For many developing nations that are competing with China, the detrimental effects of China's ascendancy are especially severe.<sup>66</sup> Developing nations obtained large quotas under the MFA and felt "artificially protected from competition."<sup>67</sup> The artificial protections initially provided economic stability and thus an environment

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60. See, e.g., Bradsher, *China Relents*, *supra* note 56.

61. *Id.* In 2004, China announced that it would impose tariffs on some textile exports. It was assumed to have been done in order to avoid a trade war between China and the United States and the European Union. It is similar to the self-imposed quotas Japan set on its car exports in the 1980's to "allay worries from Detroit that it would take over much of the American automobile market." *Id.* Currently, however, the WTO provisions "prohibit the kind of semi-voluntary export quotas that Japan imposed on its car shipments in the 1980's." *Id.*

62. See also International Trade Statistics 2005, *supra* note 59, at IV.74, IV.82 (reporting that China's increases from 2003 to 2004 were 24% in textiles and nineteen percent in clothing). See also Kanter & Bradsher, *supra* note 35. The quotas will not severely affect China because "[m]anufacturers are . . . likely to take the initial steps of cutting and sewing garments in China and then ship them elsewhere for final assembly, thereby bypassing quotas." *Id.*

63. See RIVOLI, *supra* note 4, at 166.

64. *Id.*

65. *Id.*

66. There are many nations affected by China's domination. See *id.* at 165-67. However, for developed nations it is less severe. "If the surges from China hurt South Carolina, the effects will be far worse in a number of developing countries." *Id.* at 167.

67. Mustafizur Rahman, *The Price of Free Trade Part I*, YALE GLOBAL ONLINE, Sept. 29, 2004, available at <http://yaleglobal.yale.edu/display.article?id=4608> [hereinafter Rahman, *Free Trade Part I*]. Both Bangladesh and Cambodia received large quotas in 2003, which enabled their markets to focus on growth in the areas in which they had quotas. See JAMES BOVARD, *THE FAIR TRADE FRAUD* 38 (1991) ("The MFA was supposed to be a transitional arrangement to help richer countries phase out of an uncompetitive industry. Instead, the MFA provided a blank check for wealthy importing nations to shackle poorer exporting nations."); RIVOLI, *supra* note 4, at 166.

conducive to development.<sup>68</sup> The success of the protected textile and apparel industries temporarily improved the economy of Bangladesh, as well as the economies of Cambodia, Mauritius, Honduras, and Sri Lanka.<sup>69</sup>

Developing nations are now like children reliant on their parents, and they are facing extreme and detrimental effects because of their dependency.<sup>70</sup> Nations could have used the MFA market security to create long-term protections by developing additional export industries and diversifying their economies. Instead, many developing nations used the quota guarantees to construct their economies around the textile and apparel industries, which have now shifted to China and away from many of the nations formerly protected by quotas.<sup>71</sup>

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68. Rahman, *Free Trade Part I*, *supra* note 67.

69. See Ellen Israel Rosen, *The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom*, 8 CHAP. L. REV. 261, 264–65 (2005). See also RIVOLI, *supra* note 4, at 166–68 (demonstrating the positive effects quotas have on nations and how they will no longer be available to nations as quotas are phased out). In Bangladesh, for example, the Ready Made Garments sector was a primary driver of the economy, and the fact that it grew “from nearly zero in 1982 to over US\$2 billion in 1995 is a notable achievement.” Bangladesh: Country Assistance Review, <http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/609C127BFF0A89B1852567F5005D6129> (last visited Nov. 27, 2006). The GDP of Bangladesh has increased from US\$21.6 billion in 1985 to US\$56.7 billion in 2004, an increase of 380% and at an annual growth rate of 5.3% from 1995 to 2005. World Bank Organization, Bangladesh at a Glance (Sept. 15, 2006), [http://devdata.worldbank.org/AAG/bgd\\_aag.pdf](http://devdata.worldbank.org/AAG/bgd_aag.pdf). Similarly, the exports of goods and services in that time rose from US\$4.130 billion to US\$9.75 billion. *Id.* Notably, Bangladesh’s annual growth rate of exports of good and services has been steadily declining since the movement towards free trade. *Id.* For 2004, the annual growth rate of exports of goods and services was 12.5% and is predicted to be 11.6% from 2005 to 2009. *Id.* In Cambodia, similarly, the garment exports have risen from US\$27 million in 1995 to US\$1.607 billion in 2003. Omar Bargawi, *Cambodia’s Garment Industry—Origins and Future Prospects* 9 (Overseas Development Institute, Economic Statistic Analysis Unit, Working Paper No. 13, 2005), available at [http://www.odi.org.uk/esau/publications/working\\_papers/esau\\_wp13.pdf](http://www.odi.org.uk/esau/publications/working_papers/esau_wp13.pdf).

70. See, e.g., BOVARD, *supra* note 67, at 40 (“Although the MFA was established to prevent disruption to companies producing specific items, the U.S. government has greatly expanded import controls through the use of group quotas.”).

71. See GLOBAL TRADE, *supra* note 1, at 170 (noting that nations thought it was in their best interests to pursue the growing textile industry). Despite the security provided by the quota regime, the fear is that China will “squeeze [other nations] out completely.” Edward Gresser, *The End of Textile Quotas Will Redistribute Pain and Gain*, YALE GLOBAL ONLINE, June 10, 2004 (explaining the risks faced by many developing nations due to their reliance on textile exports as the quotas are eliminated). For example, “[g]arment factories employ more than three million people in Southeast Asia, four million in Bangladesh and Pakistan, half a million in Egypt. Smaller countries often rely

Unfortunately, the opportunity to diversify is lost.<sup>72</sup> Without the quota guarantees, the necessary funds are unavailable, natural resources are limited, and foreign investors are unwilling to risk the venture.<sup>73</sup> Affected nations have few other industries in which they can pursue economic security.<sup>74</sup>

These nations reluctantly continue to rely on the diminishing textile and apparel industries as the major exports and the principal source of employment.<sup>75</sup> In Bangladesh in 2003, a time when free trade had clearly affected the nation, garments still represented 62.3% of all of the country's manufactured exports.<sup>76</sup> Similarly, in Cambodia in 2003, garments accounted for a 75.5% share of the economy's merchandise exports.<sup>77</sup>

Bangladesh, India, Cambodia, Pakistan, Vietnam, and many Caribbean and African nations are now competing for the small percentage of the demand for textile and apparels that remains after nations purchase China's total supply of goods.<sup>78</sup> The effects are dramatic. From 2001 to 2004, Bangladesh, significantly less able to compete with China's cheap

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even more heavily on the garment industry, with clothes making up about 98% of Lesotho's exports and 80% of Cambodia's." *Id.*

72. See Rahman, *Free Trade Part I*, *supra* note 67.

73. *Id.* As the quotas are disappearing, many nations are trying to diversify their export industries. "[U]nlike wealthier countries, poor countries with low literacy, weak infrastructure and other supply-side constraints may have limited capacity to benefit from free trade." GLOBAL TRADE, *supra* note 1, at 27. This capacity is limited further by economic instability. *Id.*

74. Most of the nations used the textile and clothing industries as their sole reliance. See RIVOLI, *supra* note 4, at 166–68. See also *supra* note 28 and accompanying text. For example, in Bangladesh, "there is little other industry and no safety net of any kind." RIVOLI, *supra* note 4, at 168.

75. See Rahman, *Free Trade Part I*, *supra* note 67. See also U.S. Department of State, *Background Note: Bangladesh*, <http://www.state.gov/r/pa/ei/bgn/3452.htm> (last visited Nov. 18, 2006) (stating that the garment industry was the new source of employment in the last decade and describing the difficulty the government has finding alternative sources of employment for citizens).

76. World Trade Organization, *International Trade Statistics 2004*, Table IV.70, available at [http://www.wto.org/english/res\\_e/statis\\_e/its2004\\_e/its04\\_bysector\\_e.pdf](http://www.wto.org/english/res_e/statis_e/its2004_e/its04_bysector_e.pdf) [hereinafter *International Trade Statistics 2004*]. See Media Release, United Nations Development Program, *Bangladesh Initiative Seeks New Global Trade Options for the Poor* (June 2, 2003), <http://www.un-bd.org/undp/media%20releases/MFA%20actual.pdf>. "Bangladesh is an extreme example, [yet] a high level of dependence on other types of external income is not unusual for a developing country at an early stage of its development." PAGE, *supra* note 1, at 282.

77. See *International Trade Statistics 2004*, *supra* note 76. Similar to Cambodia and Bangladesh, in Sri Lanka, garments represented a 50% share in the economy's total merchandise exports in 2003. In Honduras, garments represented a 38.3% share in their economy in the same year. In Mauritius, garments represented a 49.9% share. *Id.*

78. Rahman, *Free Trade Part I*, *supra* note 67.

production, experienced a fall in market share of U.S. imports of nearly ninety percent.<sup>79</sup>

*D. The Incidence of Displaced Workers in Nations Affected by the Phase Out*

Approximately thirty-million workers in developing nations could lose their jobs as surges in textile and clothing exports from China cause a decline in their nations' exports.<sup>80</sup> The lost jobs in the textile industry will also affect workers in related industries that rely upon the textile industry.<sup>81</sup> Textile and apparel workers provide the primary source of income for their households and will have difficulty supporting themselves and their families as the reduction of exports causes the elimination of their jobs.<sup>82</sup> "Nearly 70 percent of workers in the . . . apparels sectors are rural women who migrated to live and work in the cities," and the extremely low-skill, low-paying jobs they are required to accept out of desperation are frequently demeaning.<sup>83</sup> The forced occupations, such

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79. RIVOLI, *supra* note 4, at 168.

80. See Magnusson, *supra* note 19 ("From the Dominican Republic to Bangladesh, some 30 million workers in dozens of developing countries could see their jobs suddenly evaporate."). See also Gresser, *supra* note 71 (noting the millions of workers employed by garment industries and the possibly devastating effects of the elimination of quotas).

81. See GLOBAL TRADE, *supra* note 1, at 181 (stating that transportation, hotel, banking, and shipping industries all derive business from the textile and apparel industry, and it is estimated that US\$2 billion is generated from the linkages between these industries and the textile and apparel industry). See also RIVOLI, *supra* note 4 ("[E]ach job in textiles and apparel may generate two jobs in ancillary services such as transportation or insurance, and these jobs are also at risk.") (citing NATHAN ASSOCIATES, CHANGES IN GLOBAL TRADE RULES FOR TEXTILES AND APPAREL: IMPLICATIONS FOR DEVELOPING COUNTRIES 6).

82. See GLOBAL TRADE, *supra* note 1, at 181.

Surveys have shown that without the wages of a garment worker, 80% of garment workers' families would fall below the poverty line. Female garment workers provide 46% of their total family income, while 23% of unmarried garment workers (both male and female) account for their families' primary source of income. Moreover, 70% of workers have migrated from rural to urban areas because of a push or crisis, such as displacement from flooding or erosion, or because the prime income earner has been injured or fallen sick. All in all, it is clear that workers' families can be expected to face enormous financial difficulties when a factory closes.

*Id.*

83. Rahman, *Free Trade Part I*, *supra* note 67.

as prostitution, are also frequently inhumane or lead to inhumane standards of living.<sup>84</sup>

The problem of displaced workers exists in both developed and developing nations, yet developing nations are often in more challenging circumstances.<sup>85</sup> In developed nations, as unemployment increases, displaced workers often receive monetary assistance and retraining.<sup>86</sup> Although retraining programs are not ideal, developing nations have no such option, as they do not have the economic stability to compensate displaced workers.<sup>87</sup> Many government representatives within developing nations are also reluctant to protect workers from human rights viola-

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84. *Id.* Occupations of displaced workers often include prostitution, work in brothels, or other forms of sex work. See Tom Fawthrop, *The Price of Free Trade Part II*, Global Policy Forum, Oct. 1, 2004, available at <http://yaleglobal.yale.edu/display.article?id=4627>. See also Elizabeth Becker, *Low Cost and Sweatshop-Free*, N.Y. TIMES, May 12, 2005, at C1. These women workers will likely suffer unwanted pregnancies and sexually transmitted diseases at very young ages, effectively compromising their productive lives. One article tells the story of Neb Vicheka, "a 31-year-old union shop steward at the Sportex factory" in Bangladesh. Becker, *supra*. "She is one of the 250,000 garment factory workers in [Bangladesh], most of them female, and she has seen young women laid off from factory jobs end up as hostesses in Phnom Penh's karaoke bars or beer gardens, a variant of prostitution." *Id.* Other possible alternatives for these women include "tailoring, domestic work and office cleaning," but these occupations do not provide the "comparatively high and consistent wages" that the textile and apparel industry provides. GLOBAL TRADE, *supra* note 1, at 181. It is clear that "the loss of garment jobs would translate into higher poverty and the loss of employment opportunities for women." *Id.*

85. In the United States, for example, the evolution of the textile industry has affected the employment of workers in the textile industry. Lower priced textile products from Asian countries are causing the American manufacturers to replace American made garments with Asian imports. See Barboza & Becker, *supra* note 16. After the end of all quotas on textiles and apparel around the world, imports to the United States from China jumped about 75%, according to trade figures released by the Chinese government. Many plants in the United States have been forced to close, causing the displacement of workers. RIVOLI, *supra* note 4. During the period between 2000 and 2003, "the odds of losing a manufacturing job were *fifty times* higher than losing a job in the greater economy as a whole." TED C. FISHMAN, CHINA, INC.: HOW THE RISE OF THE NEXT SUPERPOWER CHALLENGES AMERICA AND THE WORLD 178 (2005).

86. The United States assists displaced workers by providing employment benefits, wage assistance, or employee training through the Trade Adjustment Assistance Act. See US Department of Labor Employment & Training Administration, Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) Services and Benefits, <http://www.doleta.gov/tradeact/benefits.cfm#skip2nav> (last visited Oct. 1, 2005).

87. Whether it is due to economic difficulties or political instabilities, developing nations rarely have the ability to compensate displaced workers. See, e.g., Amy Waldman, *Helping Hand for Bangladesh's Poor*, N.Y. TIMES, Mar. 25, 2003, at A1 ("[S]uccessive governments, burdened by inefficiency and corruption, have struggled to fulfill basic needs."). Outside assistance is usually necessary. See *id.*

tions, arguing that domestic policies designed to protect workers decrease their nations' competitive advantage and thus their capacity to obtain a place in the international market.<sup>88</sup> Developing nations often pursue nationwide, aggregate economic development and global economic participation in the hope that they will eventually benefit the majority of the population.<sup>89</sup>

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88. Countries often focus on the international interests over the domestic interests in order to promote development. "In other words, the relationship between free trade and state regulations tends to be a zero sum game: if one is pushed too far, a benefit for one is likely to come at a cost to the other." CHO, *supra* note 9, at 2. See also Kym Anderson, *Environmental and Labor Standards: What Role for the WTO?*, in INT. ORG., *supra* note 12, at 231, 231–34 (examining nations' concern for their competitiveness rather than their protection of workers, labor standards, or the environment).

Many in developing countries perceive the entwining of . . . social issues with trade policy as a threat to both their sovereignty and their economies . . . . As international economic integration proceeds, pressure increases to reduce differences in domestic policies that have significant trade consequences. . . . In poor countries . . . people fear being forced to raise standards at an earlier stage of development than they would otherwise choose, thereby reducing their competitive advantage.

*Id.* at 231–32. Many argue that the competitive advantage helps nations find a place on the international market. See, e.g., Aun Porn Moniroth, *Economic Integration in East Asia: Cambodia's Experience*, in EAST ASIAN VISIONS: PERSPECTIVES ON ECONOMIC DEVELOPMENT 17, 28 (Indermit Gill, Yukon Huang & Homi Kharas eds., 2006), available at [http://siteresources.worldbank.org/INTEASTASIAPACIFIC/Resources/226262-1158262834989/EA\\_Visions\\_2.pdf](http://siteresources.worldbank.org/INTEASTASIAPACIFIC/Resources/226262-1158262834989/EA_Visions_2.pdf) (arguing that Cambodia will be best off if it pursues the benefit from the "exploitation of competitive advantage, economies of scale, competition, and innovation").

89. See, e.g., DOHA WTO Ministerial 2001: Ministerial Declaration, [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf) (describing the result of WTO negotiations with developing nations, which are focused on general economic integration). Through various provisions of the Doha Declaration, WTO member governments demonstrate their dedication to the improvement of the general welfare of member governments. For example, the declaration states, "[w]e recognize that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building." *Id.* Each of these examples of benefits to LDCs is a means to promote the general welfare of the country, which is the only possible way for the WTO to address development for all member countries. *Id.* para. 1. See also CHO, *supra* note 9, at 1. Cho explains that "thanks to this expansion of international trade, many countries including newly industrialized economies . . . such as Korea, have been able to escape from the misery of poverty and dramatically raise their standards of living." CHO, *supra* note 9, at 1.

### III. EVIDENCE IN INTERNATIONAL LAW OF AN ENFORCEABLE ECONOMIC RIGHT TO WORK

Whether nations are permitted to ignore the immediate welfare of their citizens depends in large part on whether there is an enforceable right to work under the international framework.<sup>90</sup> Economic rights developed under the human rights agenda, and an international covenant, guarantees the right to work as well as other economic rights.<sup>91</sup> Even so, implementation of economic rights is difficult, and enforcement has not been pursued extensively.<sup>92</sup> Despite the struggles with implementation and enforcement, the international community now publicly recognizes economic rights as human rights, and the economic right to work is directly applicable to the struggle of displaced workers.<sup>93</sup>

#### *A. The United Nations and Economic Rights*

The United Nations Charter commenced an important movement in the codification of international human rights, which aided the early development of economic rights.<sup>94</sup> Although the U.N. Charter does not explicitly use the term “economic rights,” the Charter provides the general no-

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90. Countries cannot ignore an enforceable right under international law. If a right is enforceable, nations must be empowered to prescribe standards detailing the right, and they can insist that parties adopt the standards as law. *See, e.g.*, GREGORY H. FOX, DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 89 (2000). If an entitlement is to have “any meaning as an internationally enforceable right, the community of states must be empowered to prescribe standards detailing how participation is to occur and insist that parties to the major treaties adopt these standards as law.” *Id.*

91. International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. *See generally* NIHAL JAYAWICKRAMA, THE JUDICIAL APPLICATION OF HUMAN RIGHTS LAW: NATIONAL, REGIONAL AND INTERNATIONAL JURISPRUDENCE (2000) (discussing the implementation of the ICESCR and the difficulties therein).

92. Although “many consider the idea of human rights axiomatic,” this is not the case for all types of human rights. LOUIS HENKIN, HUMAN RIGHTS 1 (1999) (referring to the American Declaration of Independence as an example). With regard to economic rights, “disputes arose over the desirability of including some or all of the rights characterized as economic or social.” *Id.* at 1106.

93. *See id.* at 329 (asserting that economic rights are clearly established rights within human rights law).

94. *See generally* U.N. Charter. *See also* HENKIN, *supra* note 92, at 80 (“[Although the U.N. Charter] did not define human rights or catalogue its contents[.]. . . [t]he UN Human Rights Commission, established pursuant to the UN Charter, early set about to define the idea and its contents.”).

tion of economic development as a goal for the U.N.<sup>95</sup> The Charter states that the U.N. will promote “higher standards of living, full employment, and conditions of economic and social progress and development.”<sup>96</sup> These goals are not achieved without providing individuals the opportunity to pursue employment, maintain an income, and escape poverty.<sup>97</sup>

The U.N. Charter also gave explicit attention to economic and social issues by creating the Economic and Social Council (ESC) to conduct studies regarding matters that give rise to a decent standard of living.<sup>98</sup> The U.N. created the ESC to “make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters.”<sup>99</sup> The Charter also states that the ESC “may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”<sup>100</sup> Furthermore, the Charter commands the ESC to “set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”<sup>101</sup> Although not specifying economic rights, by granting the ESC the ability to make recommendations with regard to human rights, the Charter demonstrates an early association between economic standards and human rights.

#### *B. Universal Declaration of Human Rights and the Economic Right to Work*

The United Nations first used and defined the term “economic rights” in the internationally recognized Universal Declaration of Human Rights (UDHR).<sup>102</sup> The UDHR states:

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95. See, e.g., U.N. Charter, arts. 55(a), 62. The U.N. created individual bodies to report on economic issues and made economic development an important part of the international framework. See *id.* art. 62 (creating the Economic and Social Council).

96. See *id.* art. 55(a).

97. See RUPERT LEE & EDMUND JAN OSMANCZYK, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS* 2459 (2003) (finding that the higher standards of living, full employment, and economic benefits have not been fully implemented because developing nations still contain a considerable amount of impoverishment and fail to obtain and distribute economic benefits to their citizens).

98. U.N. Charter art. 62.

99. *Id.* art. 62.1.

100. *Id.* art. 62.2.

101. *Id.* art. 68.

102. See Universal Declaration of Human Rights, G.A. Res. 217 (III)A, U.N. GAOR, 3d Sess., at 22–27, U.N. Doc. A/810 (1948), Preamble [hereinafter UDHR]. The UDHR was adopted and proclaimed by the United Nations General Assembly Resolution 217A(III) on December 10, 1948. *Id.* at 71. See also Henry J. Steiner, *Political Participa-*



Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.<sup>103</sup>

Here, the UDHR is clearly and explicitly advocating economic rights.

The UDHR also specifically provides the right to work.<sup>104</sup> Crucially, the UDHR states that “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”<sup>105</sup> The UDHR further provides that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>106</sup>

These provisions not only present the right to work, they also obligate states to provide the right to compensation while unemployed. Although the document is only a declaration, providing no legally enforceable rights, many human rights activists argue that the U.N. Charter and the UDHR form obligations under customary international law.<sup>107</sup> Regardless of their enforceability, it is undeniable that these documents offer the foundation for the international community’s definition of human rights and the framework for subsequent codifications of human rights.<sup>108</sup>

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*tion as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77, 79 (1988) (stating that the Universal Declaration of Human Rights is the “spiritual parent” of other human rights treaties).

103. UDHR, *supra* note 102, art. 22.

104. *Id.* art. 23.

105. *Id.*

106. *Id.* art. 25.

107. HENKIN, *supra* note 92, at 322. Customary international law is the “product of State practice and *opinio juris*, or the opinion of judicial authority that these practices are regarded as legally binding.” THOMAS R. VAN DERVORT, INTERNATIONAL LAW AND ORGANIZATION 71 (1998). If states act in conformance with a norm, it becomes binding on all states as an obligation under international law. *Id.*

108. See HENKIN, *supra* note 92. Several organizations around the world that pursue protection of human rights, such as the Human Rights Watch and Amnesty International, are based upon the principles enshrined in the UDHR. See Amnesty International: Working to Protect Human Rights Worldwide, About Amnesty International, <http://web.amnesty.org/pages/aboutai-index-eng> (last visited Oct. 14, 2005); Human Rights Watch, About HEW, <http://www.hrw.org/about/whoweare.html> (last visited Oct. 14, 2005).

*C. International Covenants and Economic Rights*

The most important document enumerating and protecting economic rights is the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>109</sup> Created by the U.N., the ICESCR and the International Covenant on Civil and Political Rights (ICCPR) govern human rights protection.<sup>110</sup>

The ICESCR provides necessary economic rights for developing nations and the individuals therein, such as the right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”<sup>111</sup> The ICESCR further requires nations to protect the right to work.<sup>112</sup> Article 6 of the Covenant states:

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>113</sup>

The ICESCR also provides a right to secure wages sufficient to support an adequate standard of living.<sup>114</sup> These rights unambiguously protect displaced workers and require that their governments provide employment, training for employment, or compensation while unemployed.

*D. Complications with the Acceptance and Implementation of the ICESCR*

The ICESCR has faced complications regarding both its conception and enforcement. People did not conceptually accept economic rights as human rights, which was an impediment to the enforcement of the ICESCR, and nations struggled with the implementation of the ICESCR due to its unique enforcement mechanism.

*1. ICCPR Versus ICESCR: It Should Never Have Been a Fight*

Although the UDHR did not distinguish between economic or political rights, political pressures at the time caused a divergence between na-

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109. ICESCR, *supra* note 91.

110. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR].

111. ICESCR, *supra* note 91, art. 6.1.

112. *Id.* art. 6.1.

113. *Id.*

114. *Id.* arts. 7, 11.

tions regarding which rights, economic or political, were human rights.<sup>115</sup> The disagreement forced the U.N. to make separate documents.<sup>116</sup>

The U.N. still intended the ICESCR to work in conjunction with the ICCPR, yet separating the rights created a hierarchy and a resulting preference for the more easily implemented political rights within the ICCPR.<sup>117</sup> The ICCPR, however, fails to provide the means for poor individuals to seek immediate assistance in obtaining food or an income, and it fails to provide redress for a state's failure to provide an adequate standard of living.<sup>118</sup> Therefore, although the ICCPR provides rights in-

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115. HENKIN, *supra* note 92, at 321. The ICCPR and ICESCR were created together after World War II to address the issues disputed in the war. *See, e.g.*, FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* 2 (3d ed. 2002). The rights were separated into these two documents, rather than one comprehensive document, due to pressures from the international community subsequent to World War II. It was thought that the two sets of rights could not live and function together in one document. *See* HENKIN, *supra* note 92, at 1106 (noting that disputes arose regarding the rights to be codified as human rights). The disputes included "disagreement over whether the mechanisms for implementation of positive rights should differ from those for implementation of negative rights; Cold War rivalries; and the emergence of Third World states that perceived a link between economic and social rights and their striving for economic development." *Id.*

116. HENKIN, *supra* note 92, at 1106.

117. SKOGLY, *supra* note 44, at 52. The Covenants' creators struggled to promote the indivisibility of economic and political rights by giving the ICESCR and the ICCPR similar structures. *See* HENKIN, *supra* note 92, at 1106 ("[T]he General Assembly affirmed that both sets of rights were 'interconnected and interdependent.'"). In the years that followed, however, many nations discouraged economic rights and instead focused on political rights. *See* Robert Howse & Makau Mutua, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization*, in *HUMAN RIGHTS IN DEVELOPMENT: THE MILLENNIUM EDITION* 51, 77 (Hugo Stokke & Arne Tostensen eds., 2001), available at <http://www.ichrdd.ca/english/commndoc/publications/globalization/wtoRightsGlob.html>. "[M]any governments and human rights groups in the West became unsympathetic and even hostile to the idea of economic and social rights as 'rights.' . . . Further, it was argued that, unlike civil and political rights, these rights were not justiciable in courts of law." *Id.* *See also* Kitty Arambulo, *The International Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights*, in *SOCIAL, ECONOMIC AND CULTURAL RIGHTS: AN APPRAISAL OF CURRENT EUROPEAN AND INTERNATIONAL DEVELOPMENTS* 57, 58-60 (Peter Van der Auweraert ed., 2002) (noting the intention to make the ICCPR and ICESCR indivisible and interdependent through "similar structures and common links" and, despite this intention, the many diverging elements of the Covenants and how they reflect political differences).

118. *See* Johan D. van der Vyver, *Human Rights in the Twenty-First Century: A Global Challenge*, 8 EMORY INT'L L. REV. 787, 799 (1994) (book review) (arguing that although democratic rights may prevent extreme conditions that deprive the country of its sustenance, political rights cannot guarantee economic rights for individuals). Citizens within nations are often removed from the political process, and this separation makes it

tegral to a democratic life,<sup>119</sup> the rights are related to the economic and social rights within the ICESCR, and the two sets of rights are most effective if enforced in conjunction with each other.<sup>120</sup> “[I]t is now widely recognized and accepted that a society that denies basic social and economic rights cannot be stable and democratic and respect civil and political rights.”<sup>121</sup> Thus, the ICESCR’s rights must be a mandatory and necessary aspect of international law.<sup>122</sup>

## 2. Struggles with the Implementation of the ICESCR

Despite the unequivocal existence of economic rights, the ICESCR’s aspirational enforcement mechanism impedes the implementation of the Covenant’s rights.<sup>123</sup> The ICESCR prescribes “progressive realization,”

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difficult for citizens to gain recourse for their immediate need for employment. *Id.* Essentially, “what is the use of the right to vote while one has no food to eat”? *Id.*

Economic exploitation is prevalent, if not rampant, even in democratically governed societies, often with the open approval of the voters. Likewise, many third-world governments, from Honduras to Bangladesh, have preferred to turn a blind-eye towards the sweat-shop employers, mainly because they are a major source of employment and precious foreign exchange.

Rapanagunta, *supra* note 20.

119. The ICCPR recognizes several rights, including the right to self-determination, to life, to be free from slavery, and to take part in public affairs. ICCPR, *supra* note 110, arts. 1, 6, 8(1), 25(a). The Covenant also recognizes many rights of individuals, including the right to legal recourse when their rights have been violated, the right to life, the right to liberty and freedom of movement, the right to equality before the law, the right to presumption of innocence until proven guilty, the right to appeal a conviction, the right to be recognized as a person before the law, the right to privacy, and freedom of thought, conscience, religion, opinion, expression, assembly, and association. *See id.*

120. Howse & Mutua, *supra* note 117, at 78. *See also* A.M. Mahmudur Rahman, *Domestic Application of International Human Rights Norms and Access to Justice: The Bangladesh Experience*, in DEVELOPING HUMAN RIGHTS JURISPRUDENCE VOLUME 8, EIGHTH JUDICIAL COLLOQUIUM ON THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS 55, 55 (2001) [hereinafter Rahman, *Domestic Application*]. “In some developing countries . . . democratic government, based on the will of the people exercised through their elected representatives, has been subject to not infrequent interventions by extra-constitutional authorities. For example, Bangladesh has been under military rule twice in less than 30 years since its independence.” *Id.* The result is that “the Constitution of the People’s Republic of Bangladesh has been suspended on several occasions.” *Id.*

121. Howse & Mutua, *supra* note 117, at 77–78.

122. *See id.* at 77 (“It has been part of UN doctrine that the entire family of rights—civil and political as well as economic, social and cultural—are indivisible.”).

123. Barbara von Tigerstrom, *The Role of the Ombudsman in Protecting Economic, Social and Cultural Rights*, in 2 INTERNATIONAL OMBUDSMAN INSTITUTE, THE INTERNATIONAL OMBUDSMAN YEARBOOK 3, 11 (1998) [hereinafter OMBUDSMAN]

rather than full and immediate implementation, as the means eventually to achieve the protection of the Covenant's rights.<sup>124</sup> Specifically, Article 2.1 of the ICESCR limits implementation by requiring member nations to undertake steps only "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant."<sup>125</sup> The Committee on Economic, Social and Cultural Rights (Committee), the body charged with the task of regulating the ICESCR,<sup>126</sup> has stressed that nations cannot use their lack of available resources as an excuse for failing to undertake measures to respect, protect, and fulfill the rights.<sup>127</sup> One comment the Committee made in regard to Article 2.1 states:

In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources

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("[P]rogressive realization is difficult to assess, and . . . the qualification of resource availability complicates matters still further.").

The different nature of economic, social, and cultural rights, the vagueness of many of the norms, the absence of national institutions specifically committed to the promotion of economic, social, and cultural rights *qua* rights, and the range of information required in order to monitor compliance all present challenges. Complicating matters further, evaluation of performance to date within the U.N. system has focused on assessments of "progressive realization" rather than the identification of violations.

Audrey R. Chapman, *Monitoring Women's Right to Health Under the International Covenant on Economic, Social and Cultural Rights*, 44 AM. U. L. REV. 1157, 1161–62 (1995).

124. See ICESCR, *supra* note 91, art. 2.2; compare ICCPR, *supra* note 110, art. 2. The ICCPR uses immediate implementation of rights and requires states, which do not have the rights already "provided for by existing legislative or other measures," to "take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant." *Id.* See also Ineke Boerefijn, *The Human Rights Committee's Role in Strengthening the Implementation of the Covenant on Civil and Political Rights*, in SOCIAL, ECONOMIC AND CULTURAL RIGHTS, *supra* note 117, at 127, 128–31 (noting the difference between the ICCPR and the ICESCR's implementations, finding the ICCPR "does not permit long delays or sanction the idea of 'progressive' application over time").

125. ICESCR, *supra* note 91, art. 2.1 (emphasis added).

126. See JAYAWICKRAMA, *supra* note 91, at 62 (noting that the Committee was created to address the ineffective reporting mechanism mandated in the ICESCR).

127. ICESCR, art. 2, para. 1, cmt. 3 § 10, reprinted in UN Office of the High Commissioner for Human Rights, *The Nature of States Parties Obligations* (Art. 2, par. 1): 14/12/90: CESCR General Comment 3 (General Comments), [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument) [hereinafter *Economic Committee*].

that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>128</sup>

Despite the Committee's attempt to encourage enforcement, using available resources as a limitation on progressive realization nonetheless provides nations with an excuse for failing to implement economic rights.<sup>129</sup> Furthermore, assessing progressive realization is a difficult task.<sup>130</sup> Due to the lack of resources available to analyze data, the Committee would likely be forced to excuse nations that show a lack of profit-bearing industries capable of providing jobs.<sup>131</sup>

In addition to problems with progressive realization, disputes also arose regarding the implementation of economic rights, the relative importance of the different rights within the ICESCR, Cold War rivalries, and the repercussions of implementation on a country's resources.<sup>132</sup>

128. *Id.*

129. Many critics argue that the Covenant provides no obligatory rights, and they blame, in part, the progressive realization implementation method of the Covenant. *See* Tigerstrom, *supra* note 123, at 11 (“[I]f we cannot be sure of how a state is supposed to give effect to its obligations under the Covenant, and avoid violating the rights contained therein, how can we design programs designed to assist in the protection and promotion of these rights?”).

130. *See* Chapman, *supra* note 123, at 1162–63.

[E]valuating the progressive realization of economic, social, and cultural rights is very complicated. It requires the availability of comparable statistical data from several periods in time to assess trends, preferably disaggregated in relevant categories, including gender, race, region, and linguistic group . . . the Committee [does not] have regular access to relevant statistical data collected by other parts of the U.N. system and the World Health Organization. Moreover, analysis of these data to evaluate performance, were they to be available, involves statistical expertise that members of the U.N. Committee on Economic, Social and Cultural Rights, staff of the U.N. Centre on Human Rights, and nongovernmental organizations generally lack.

*Id.*

131. *See, e.g., id.* *See also* Fernando Alvarez de Miranda y Torres, *Human Rights and Their Function in the Institutional Strengthening of the Ombudsman*, in *OMBUDSMAN*, *supra* note 123, at 146, 150 (“[There is no] procedure for interposing an interstate claim or individual claims . . . There is no possibility of sanctioning those countries that do not fulfill their duties and the procedure [of reporting to the Committee] only aims at initiating dialogue between the supervisory agency and the states.”).

132. HENKIN, *supra* note 92, at 1106. The disputes also reflected both a “disagreement over whether the mechanisms for implementation of positive rights should differ from those for implementation of particular rights . . . and the emergence of Third World states that perceived a link between economic and social rights and their striving for economic development.” *Id.* There have also been disagreements regarding whether the “right to work is satisfied if a society maintains or tolerates unemployment but provides adequate unemployment insurance and other welfare benefits.” *Id.* at 329.

Economic rights challengers complain that the financial costs of implementing economic rights are too high because they will detract from the nation's resources and lead to "an over grown state apparatus."<sup>133</sup> Many nations thus argue that a state must only provide a legal framework which encourages fairness and prohibits fraud, but leaves the responsibility of career selection to each individual.<sup>134</sup>

The obstructions to implementation are compounded by the "situation of persistent non-reporting by States."<sup>135</sup> States are required to submit reports to the Committee, but it is difficult to monitor the implementation of the rights, or the lack of available resources, if nations fail to submit reports.<sup>136</sup>

The implementation of economic rights, such as the right to work, remains, in essence, voluntary.<sup>137</sup> Nations are not required to incorporate economic rights into their domestic laws, and they are rarely held ac-

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133. See Asbjørn Eide, *Economic, Social, and Cultural Rights as Human Rights in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK* 21 (Asbjørn Eide et al. eds., 1995), as reprinted in HENKIN, *supra* note 92, at 1115–16 ("A widely spread misunderstanding has been that all economic, social and cultural rights must be provided by the State, and that they are costly and lead to an overgrown state apparatus.").

134. See Philip Alston, *U.S. Ratification of the Covenant on Economic Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 374 (1990) (noting that the United States informed the U.N. that it had no intention of providing the full spectrum of economic rights and would only provide the legal framework for fairness).

135. HENKIN, *supra* note 92, at 517 (citing Committee on Economic, Social, and Cultural Rights, Report on the Sixteenth and Seventeenth Sessions (Sessional/Annual Report of Committee), U.N. Doc. E/1998/22. para. 42). See also Chapman, *supra* note 123, at 1162 ("Many governments do not have appropriate, quality data for this type of analysis, and those that do have the data generally do not make them available to the United Nations or nongovernmental organizations.").

136. See HENKIN, *supra* note 92, at 1151 (citing the ICESCR, *supra* note 91). The ICESCR did "not create a mechanism for the binding resolution of disputes over states' compliance with their obligations. The implementation procedures require the States Parties to submit reports to the Economic and Social Council of the United Nations (the ECOSOC), and allows ECOSOC to make [unenforceable] recommendations of a general nature." *Id.* Furthermore, not every nation that is a member of the WTO has ratified, or even signed, the ICESCR. See *Members and Observers*, *supra* note 37. See also Office of the United Nations High Commissioner for Human Rights: Status of Ratifications of the Principal International Human Rights Treaties (2006), <http://www.ohchr.org/english/countries/ratification/3.htm>. As of November 1, 2006, there were 155 nations that have signed, ratified, acceded to, or succeeded to the ICESCR, yet not all of the nations are the same as the members to the WTO. Additionally, several nations have only signed but not ratified the Covenant. Notably, the United States has signed but not ratified the Covenant. *Id.*

137. See HENKIN, *supra* note 92, at 1151.

countable for violating economic rights.<sup>138</sup> Presently, a state must have the ambitious will to establish legal guidelines for these rights and a willing judiciary to enforce them.<sup>139</sup> The courts of a nation will be unreceptive to complaints if there are no codified economic rights.<sup>140</sup> Furthermore, a worker's opportunity to adjudicate his or her claims in the international judicial system is limited because the International Court of Justice (ICJ) may only adjudicate issues between nations, not complaints between an individual and a nation.<sup>141</sup> Unless a third-party nation chooses to take the displaced worker's nation to the ICJ for noncompliance, and the violating nation agrees to submit to its jurisdiction, or they

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138. See ICESCR, *supra* note 91, art. 2.1 (requiring nations only to undertake steps, rather than requiring nations to incorporate the rights into domestic law). This differs from the immediate implementation of the ICCPR. See Boerefijn, *supra* note 124, at 128–31 (noting that the ICESCR's lax method for implementation in comparison to that of the ICCPR); *supra* note 124 and accompanying text. It is also important to note that voluntary implementation of economic rights has not yet risen to the level of customary international law. For a practice to become enforceable under customary international law, it must be a widespread practice among nations. See, e.g., STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, art. 38(1). See CHRISTIAN J. TAMS, ENFORCING OBLIGATIONS ERGA OMNES IN INTERNATIONAL LAW (2005) for more on the history and implementation of customary international law practices.

139. SKOGLY, *supra* note 44, at 55. See also INDIA CONST. arts. 39, 41, 42. Although unenforceable in the courts, India's constitution secures the right to work to the extent it is economically feasible and just. Furthermore, it guarantees humane conditions of work where work is secured. See also S. AFR. CONST, Ch. 2, §§ 23(1), 22. Section 23 guarantees the right to fair labor practices, and section 22 guarantees the freedom to choose a trade, occupation, or profession. *Id.*

140. Few nations have created a judicially enforceable right to work in their domestic laws. See *supra* notes 138–39 and accompanying text. Nations will likely be unwilling to entertain cases regarding rights they have not codified. Furthermore, many nations that respect international law consider municipal law to be at a higher level of enforcement than international law, and if there is a conflict, municipal law will win. See, e.g., Mukul Mudgal, *Prisons and Custody: Application of International Human Rights Norms by the Supreme Court of India*, in DEVELOPING HUMAN RIGHTS JURISPRUDENCE, *supra* note 120, at 127, 128–29 (“[W]hen [the Rules of International Law] run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constitutional legislatures in making the laws may not be subjected to external rules . . . . Comity of nations or no, Municipal Law must prevail in case of conflict.”) (quoting Gramophone Company of India Ltd v. Birendra Bahadur Pandey, A.I.R. 1984 S.C. 667 (India)). Developing nations are also often unable to assert certain democratic principles due to military rule. For example, in Bangladesh, “[a]s a result of military rule, democracy was destroyed and judicial activism in enforcing fundamental rights severely curtailed, with a consequent denial of access to justice.” Rahman, *Domestic Application*, *supra* note 120, at 55. Therefore, implementation of a right which is inherently controversial will most likely fail in unstable nations like Bangladesh.

141. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, art. 34 (“Only states may be parties in cases before the Court.”).



agree to submit to the jurisdiction of another nation's courts, the worker has few options.<sup>142</sup> Therefore, displaced workers can point to the ICESCR, but they are unable to voice their complaint or seek redress.

*E. Finding a Solution: Something More Immediate*

Notwithstanding the arguments against economic rights, the ICESCR was "designed to establish, and did establish, legally binding obligations."<sup>143</sup> Although implementation may be problematic, this does not reduce the binding nature of the economic right to work and the state's duty to protect the right and thus ensure its maximum potential.<sup>144</sup> The tension between obligatory enforcement and the reality of nations' actions dictates the solution.

Creating a new covenant for economic rights with a modified enforcement mechanism is an unlikely prospect. Disagreements regarding the current enforcement mechanisms would most likely impede progression

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142. The ICJ requires consent for nations to be party to a suit. *Id.* art. 36. There are also potential standing restrictions if a third party wishes to take a state to the ICJ for violating the rights of workers. There would be no standing to represent the displaced worker. As an alternative, a party may attempt to sue a violating nation in a court of a third-party nation, but in that case, the nation would have no jurisdiction. One option is to propose universal jurisdiction, but "universal jurisdiction is reserved for the most heinous crimes." STEPHEN MACEDO, *Introduction to UNIVERSAL JURISDICTION: NATIONAL COURTS AND THE PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW* 1, 8 (Stephen Macedo ed., 2004) [hereinafter *UNIVERSAL JURISDICTION*]. It is unlikely that courts will view the right to work as a "heinous crime" or a crime giving rise to the necessary level of concern required for universal jurisdiction to apply. See A. Hays Butler, *The Growing Support for Universal Jurisdiction in National Legislation*, in *UNIVERSAL JURISDICTION*, *supra*, at 67, 68 (noting that crimes against humanity and genocide justify the use of universal jurisdiction). Furthermore, "sovereign immunity protects both foreign and domestic governmental actions. It places the legitimate exercise of governmental authority above the private rights of individuals or corporations to recover damages in civil legal actions." DERVORT, *supra* note 107, at 309. Therefore, a nation cannot be sued in the courts of another nation by the principle of sovereign immunity. So long as the alleged actions are not commercial, the doctrine provides immunity from the jurisdiction unless the nation consents. *Id.* at 305.

143. HENKIN, *supra* note 92, at 329.

144. *Id.* at 1118 ("[O]bligations [regarding social and economic rights] exist and can in no way be neglected."). Because the rights are binding, a state must do all it can to protect and enforce that right. See Eide, *supra* note 133, at 1115-18 (describing the state's obligations in enforcing economic, social, and cultural rights, including respecting resources of individuals and protecting the resources against others).

towards a new draft of the ICESCR.<sup>145</sup> Most nations would ask for less specific regulations, rather than more.<sup>146</sup>

The international community needs a unified interpretation of ICESCR's right to work.<sup>147</sup> The available resources requirement of the ICESCR must be interpreted to require nations to allocate resources in the manner most effective for economic security and maximum employment.<sup>148</sup> Although it is impossible to provide a job for each person, a state need not employ each person to be in compliance.<sup>149</sup> Compliance should be regarded as allocating and securing adequate resources so that the maximum amount of individuals will be able to pursue their right to work.<sup>150</sup>

Furthermore, although free trade proposes an eventual natural remedy through the market,<sup>151</sup> reliance on the eventual benefits from free trade

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145. Eide, *supra* note 133, at 330.

146. The ICESCR's requirement of available resources "can be empirically investigated to prove the frequent assertion that it is not the lack of available resources, but their misallocation . . . which hampers the realization of human rights." THE RIGHT TO FOOD 157 (Philip Alston & Katarina Tomaševski eds., 1984).

147. Tigerstrom, *supra* note 123 ("As work progresses in the interpretation of the Covenant and its obligations, the nature of states' obligations, rights violations, and possible means of implementation may be more clearly identified."). One of the primary arguments against economic rights is that they "do not oblige us really to do anything," and Philip Alston has called "those seeking ratification to develop 'an entirely new strategy'" for pursuing protections of economic and social rights. Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an "Entirely New Strategy,"* 44 HASTINGS L.J. 79, 83 (1992) (quoting Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365 (1990)).

148. See, e.g., Stark, *supra* note 147, at 127 ("[All nations must] meet the subsistence needs of their inhabitants."). See also note 144 and accompanying text.

149. Eide, *supra* note 133, at 1116. Eide argues that states are not obligated to provide a job for each individual. The individual must pursue employment through his own efforts and use of resources "to find ways to ensure the satisfaction of his or her own needs, individually or in association with others. Use of his or her own resources, however, requires that the person has resources that can be used." *Id.*

150. See Tigerstrom, *supra* note 123, at 12. The economic rights do not have to be equated with their goal of full implementation. Individuals can be protected without having each person enjoy the full extent of the right. *Id.* See also Henkin, *supra* note 92, at 1116. For example, "States must, at the primary level, *respect* the resources owned by the individual, her or his freedom to find a job of preference and the freedom to take the necessary actions and use the necessary resources—alone or in association with others—to satisfy his or her own needs." *Id.*

151. See Frequently Asked Questions About Free Trade, <http://www.free-trade.org/faqs/faqs.html> (last visited Nov. 27, 2006). The CATO Institute claims that free trade aids nations because:

should not suffice.<sup>152</sup> The implementation of economic rights should focus on ensuring “that the multilateral trade regime allows people to fully benefit from the potential contributions that trade can make to human development.”<sup>153</sup>

#### IV. THE UNITED NATIONS DEVELOPMENT PROGRAM, ECONOMIC DEVELOPMENT, AND INDIVIDUALS' RIGHTS

Many human rights advocates have attempted to advance human rights protections and promote economic development, yet no programs or initiatives have been able to assist a nation at its most crucial moments. For example, the United Nations Development Program (UNDP), created by the U.N.'s Economic and Social Council, helps nations promote human rights and economic development by addressing issues arising out of the uneven distribution of wealth among nations.<sup>154</sup> The UNDP is described

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[W]herever globalization has taken hold, there has been a measurable improvement in incomes and working conditions. First, the competition that accompanies globalization provides an incentive for local employers in developing countries—the overwhelming source of labor abuses—to improve their practices. As foreign-owned businesses move into a country, they pay their workers more and provide a superior working environment in order to attract the best people. If they are to survive, local employers are forced to improve pay and working conditions, too. Second, Western businesses know that treating workers poorly is bad for business back home. American consumers demand that US companies respect worker rights, and US companies producing abroad pressure their local suppliers to do the same—a truly virtuous cycle. Without trade, that beneficial consumer pressure evaporates.

*Id.* Although free trade doctrines and implementations differ, the idea that free trade assists all nations is present in most doctrines. *See* GLOBAL TRADE, *supra* note 1, at 25 (“The common thread in these different [free trade] theories is that trade can contribute to growth by expanding markets, facilitating competition and disseminating knowledge.”).

152. *See* BROWN, *supra* note 9, at 134. The actions of developing nations demonstrated “a growing recognition among governments of the value that greater integration into the world market system held for their own economies.” *Id.* Yet, many developing nations faced significant difficulties improving the standards of the individuals within their nation. *Id.*

153. GLOBAL TRADE, *supra* note 1, at 16.

154. *See* United Nations Development Programme, Who We Are & What We Do, A World of Development Experience, <http://www.undp.org/about> (last visited Oct. 17, 2006). The UNDP works in conjunction with the World Bank, the International Monetary Fund, civil society, and others to help nations “attract and use aid effectively.” *Id.* The UNDP also promotes human development through “observations and experiences from around the world leading to a common understanding that places human beings at the centre of development concerns, in contrast with the primary pursuit of economic ends.” Anuradha K. Rajivan, *Movement of Natural Persons for Human Development* 3 (United

as “the UN’s global development network, an organization advocating for change and connecting nations to knowledge, experience and resources to help people build a better life.”<sup>155</sup> The UNDP has had considerable success in implementing greater awareness of economic rights and higher standards of living within many developing nations.<sup>156</sup>

The UNDP works towards a balance between globalization and development.<sup>157</sup> Towards that end, the UNDP promotes the belief that development is multi-disciplinary, focusing on people, not markets and incomes.<sup>158</sup> The UNDP also supports the hope that open markets will eventually provide economic stability.<sup>159</sup>

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Nations Development Program 2004), *available at* [http://www.undp.org.in/hdrc/APRI/wkgppr/Trade\\_HD\\_MNP.pdf](http://www.undp.org.in/hdrc/APRI/wkgppr/Trade_HD_MNP.pdf).

155. United Nations Development Programme, *Who We Are & What We Do*, *supra* note 154.

156. The UNDP is currently assisting over 160 countries throughout the world. See UNDP Country Offices and Other Programmes, <http://www.undp.org/countries> (last visited Dec. 5, 2005), for a full list of countries that the UNDP assists. For general information on the UNDP, see United Nations Development Programme, <http://www.undp.org> (last visited Dec. 5, 2005). The UNDP is “providing policy guidance and support in poverty eradication, employment and sustainable livelihoods. It also supports the mainstreaming of participatory approaches and the strengthening of civil society organizations.” UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME, *THE CHALLENGE OF THE SLUMS: GLOBAL REPORT ON HUMAN SETTLEMENTS 2003* 138 (2003). The hope is to raise awareness and participation by developing nations in order to promote the protections of human rights. *See id.*

157. Although the promotion of individual rights and global advancement are not mutually exclusive, they may require differing methods of promoting economic development. *See* UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT 1992: GLOBAL DIMENSIONS OF HUMAN DEVELOPMENT* 74 (1992), *available at* <http://hdr.undp.org/reports/global/1992/en> [hereinafter *HUMAN DEVELOPMENT REPORT*] (noting that, in the pursuit of globalization, individuals may suffer through uneven distributions of wealth which thereby leads to poverty). *See also* Rajivan, *supra* note 154, at 5. At a very fundamental level, the UNDP expects that nations provide their citizens with the opportunity for a long and healthy life, an education, and a decent standard of living. According to the UNDP doctrine, additional opportunities for the advancement of human dignity include the choices to participate in society, obtain political freedom, guarantee human rights, and maintain self-respect. *Id.*

158. The UNDP pursues human development through various means including, but not limited to, economic growth. *See* *HUMAN DEVELOPMENT REPORT*, *supra* note 157 (asserting that economic growth is essential if society is to sustain the welfare of its people, but this growth must be translated into improvements in people’s lives).

159. *See* Rajivan, *supra* note 154, at 6–8 (describing the UNDP’s method for human development and the eventual benefits free trade will provide). For example, the article describes the Millennium Development Goals put forth by the UNDP and how these goals in conjunction with the open markets will promote positive human development. *Id.* The article cites the “goal of eradicating extreme poverty and hunger[, which] is linked to opportunities for livelihoods among the relatively deprived sections of the population.”

The UNDP, however, is most adept at assisting nations that have established significant development.<sup>160</sup> The UNDP acknowledges that growing nations will benefit more from free trade, and it views “integration into the world’s economy [as] an outcome, not a prerequisite, of a successful growth strategy.”<sup>161</sup> Furthermore, the UNDP does not attempt to address economic adjustment or trade concerns, which are the sources of a nation’s unemployment.<sup>162</sup> The UNDP is able to assist only after a nation has adjusted to the shifting market and established economic stability.<sup>163</sup> As a result, it is difficult for the UNDP to provide adequate assistance for a nation like Bangladesh until its economy is stable and able to provide employment.<sup>164</sup> Thus, despite the UNDP’s high levels of

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*Id.* at 8. The article also notes that “livelihood opportunities . . . in turn can be enhanced through trade. Reduction in barriers to trade can impact rural livelihoods through increased opportunities in agriculture, fishing, and through movement of persons across national borders. Gender equality and women’s empowerment is affected by the positive opportunities from trade . . .” *Id.* at 8.

160. GLOBAL TRADE, *supra* note 1, at 27–28 (“Better human development outcomes, in the form of improved capabilities as the result of a healthier, better-educated and more skilled work force, with a strong focus on knowledge creation, contribute to higher economic growth and better trade outcomes.”). For example, Vietnam experienced an easy transition into the global economy, attributed to their initial development. “[Vietnam] has been phenomenally successful, achieving GDP growth of more than 8 percent a year since the mid-1980s, sharply reducing poverty, expanding trade at double-digit rates and attracting considerable foreign investment. And despite high trade barriers, it has rapidly integrated with the global economy.” In comparison, Haiti undertook comprehensive trade liberalization in 1994. The country reduced import tariffs and removed all quantitative restrictions. “Yet [Haiti’s] economy has gone nowhere, and its social indicators are deteriorating. Despite being a WTO member, it has made little progress in integrating with the global economy.” *Id.* The UNDP attributes Haiti’s difficult integration to its already poor economy. *Id.*

161. GLOBAL TRADE, *supra* note 1, at 28.

162. Participants in the UNDP are focused on general economic development, yet the UNDP does not implement economic policies. The goals for the UNDP, which they have termed as “the Millennium Project,” include eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality, empowering women, reducing child mortality, and improving maternal health. Millennium Project, Goals and Targets, [http://www.unmillenniumproject.org/reports/goals\\_targets.htm](http://www.unmillenniumproject.org/reports/goals_targets.htm) (last visited Nov. 27, 2006).

163. See GLOBAL TRADE, *supra* note 1, at 28 (demonstrating that the UNDP assists nations who have stable governments and potential for economic growth).

164. United Nations Development Programme, Bangladesh, Poverty Reduction in Bangladesh, <http://www.un-bd.org/undp/propoor/index.html> (last visited Oct. 15, 2006) (noting the difficulty in reducing poverty in Bangladesh due to the unsteady economy that was predicted as a result of the trade liberalization).

achievement towards promoting human development, the program can address only limited aspects of ICESCR compliance.<sup>165</sup>

In addition to the current assistance provided by the UNDP, displaced workers deserve an immediate solution to the problems resulting from the shifting market. Trade causes the displacement of workers; thus the forum regulating trade is the most appropriate to address the allocation of resources, the effects of trade on nations, and the cause of displaced workers.

## V. IMPLEMENTING ECONOMIC RIGHTS UNDER THE WTO FRAMEWORK

The WTO controls all aspects of trade liberalization and is thus the most suitable forum for addressing the displacement of workers. Admission into the WTO is highly regarded and deemed necessary to engage in contemporary trade.<sup>166</sup> Therefore, enforcement through the WTO has the potential to encourage greater implementation of economic right protections within nations.<sup>167</sup> Furthermore, if the WTO requires compliance with resource distribution provisions that are contrary to a nation's desires, the nations will likely relinquish a limited amount of territorial sovereignty in order to maintain the other benefits of WTO participation.<sup>168</sup>

### A. Current Provisions Addressing Human Rights

The limited measures the WTO provides to protect human rights are too narrow to adequately address economic rights and displaced workers.

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165. See, e.g., *id.*

166. Many nations fulfill difficult requirements to obtain WTO membership. See World Trade Organization, Understanding the WTO: The Organization; Membership, Alliances and Bureaucracy, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org3\\_e.htm#join](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm#join) (last visited Nov. 18, 2006), for a description of the requirements. For a full list of the member nations, see *Members and Observers*, *supra* note 37. Despite any apprehension towards the requirements, the benefits are substantial. "The World Bank argues that WTO membership will strengthen government reforms, assist the private sector, and improve the investment climate." Fawthrop, *supra* note 84.

167. The current enforcement mechanism merely requires reporting to the Committee on Economic, Social and Cultural Rights. See ICESCR, *supra* note 91, art. 16(1). See also Chapman, *supra* note 123, at 1160–67 (noting the limited monitoring and the difficult evaluating nations under the current structure); Tigerstrom, *supra* note 123, at 13 (explaining the ineffectiveness of the reporting method); *supra* notes 129–31 and accompanying text.

168. International law recognizes the sovereignty of nations, which gives them the right to manage international affairs, adopt any national law regarding its citizens and property, and the right to independently govern. R.P. ANAND, INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES: CONFRONTATION OR COOPERATION? 80 (1987). For a discussion on sovereignty, international law, and developing nations, see *id.* at 72.

The original trade agreement, GATT, was created without full consideration for human rights and thus had no protections in place.<sup>169</sup> In response to the human rights concerns that subsequently developed, the GATT agreement incorporated provisions recognizing supervening, non-trade, public values.<sup>170</sup> GATT's Article XX states, "Nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect public morals [or] necessary to protect human, animal or plant life or health."<sup>171</sup> These values are intended to prevail where there is conflict with free trade rules.<sup>172</sup> The provision, however, fails to "address . . . human rights *per se*."<sup>173</sup> The provision has been interpreted narrowly and is applicable only to limited situations that do not include violations of an individual's human rights.<sup>174</sup>

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169. See INTERNATIONAL FORUM ON GLOBALIZATION, *ALTERNATIVES TO ECONOMIC GLOBALIZATION: A BETTER WORLD IS POSSIBLE* 65 (2004). GATT was created to promote the expansion of trade and eventually began to "promote[ ] corporate rights over human rights and other social and environmental priorities." *Id.* See also Howse & Mutua, *supra* note 117, at 62 ("Institutionally, the GATT developed in isolation, a fact which produced a single-minded free trade perspective."). A more recent trend, however, is to acknowledge the possible conflict between promoting development and human rights violations, although the interest in human rights is admittedly mostly limited to political rights. See Philippe Sands, *Sustainable Development: Treaty, Custom, and the Cross-Fertilization of International Law*, in *INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT: PAST ACHIEVEMENTS AND FUTURE CHALLENGES* 39, 45 (Alan Boyle & David Freestone eds., 1999).

170. GATT, *supra* note 24, art. XX.

171. *Id.* art. XX(a). Article XX was intended for agriculture quarantine and other sanitary regulations, yet environmental advocates attempted to apply the article to measures taken in support of marine life. Lori Wallach, *Hidden Dangers of GATT and NAFTA*, in *THE CASE AGAINST "FREE TRADE"*, *supra* note 35, at 23, 33. If it would have succeeded with marine life, it would have been easier to apply it to other intervening factors as well.

172. GATT, *supra* note 24, art. XX. The article was construed to mean that the protective "measures might only be justified under Article XX if no less trade restrictive alternatives could be *imagined* to achieve the policy objectives in question." Howse & Mutua, *supra* note 117, at 62. Even if the proposed measures were not possible to implement, so long as they were imaginable, they would satisfy the provision and thus prevent the trade restrictive measures. See *id.* ("[N]eo-classical economists can almost always find some policy instrument other than trade restriction that could hypothetical, and without regard to real world costs, achieve a given policy objective, this interpretation amounted to making Article XX largely superfluous."). Thus, this limited justification fails to restrain countries. See *id.*

173. PHILIP ALSTON, *THE EU AND HUMAN RIGHTS* 705 (1999).

174. *Id.*

In addition to Article XX, the WTO provides special protections for nations designated as the Least-Developed Countries (LDCs).<sup>175</sup> These protections include training courses, seminars, and workshops available through the WTO.<sup>176</sup> These programs, however, “are not automatic . . . and must be requested by the member concerned.”<sup>177</sup> Often, political and economic barriers prevent nations from seeking out assistance, and they fail to experience the full potential of the benefits offered by the WTO.<sup>178</sup>

### *B. Proposed Solution*

The WTO is capable of coordinating many nations and many forms of assistance for the benefit of developing nations. By controlling trade negotiations, trade conduct, and many multilateral institutions, the WTO can therefore provide a wide breadth of opportunities for developing nations.<sup>179</sup> The WTO can provide special considerations for developing nations in negotiations. In addition, the WTO’s established and funded system of assistance for developing nations provides a working framework within which a new provision can be added.<sup>180</sup> A new provision can

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175. World Trade Organization, Preferential Tariff Treatment for Least-Developed Countries, *available at* [http://www.wto.org/english/docs\\_e/legal\\_e/waiver1999\\_e.htm](http://www.wto.org/english/docs_e/legal_e/waiver1999_e.htm) (last visited Nov. 27, 2006). The waiver allows exceptions “to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.” *Id.* For the nations recognized by the WTO as LDCs, see World Trade Organization, Understanding the WTO: The Organization; Least-Developed Countries, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm) (last visited Nov. 18, 2006).

176. World Trade Organization, WTO Training Courses, [http://www.wto.org/english/tratop\\_e/devel\\_e/train\\_e/train\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/train_e/train_e.htm) (last visited Dec. 15, 2005) [hereinafter WTO Training Courses].

177. WORLD TRADE ORGANIZATION, GUIDE TO THE URUGUAY ROUND AGREEMENT 236 (1994), *available at* [http://www.wto.org/english/docs\\_e/legal\\_e/guide\\_ur\\_deving\\_country\\_e.pdf](http://www.wto.org/english/docs_e/legal_e/guide_ur_deving_country_e.pdf).

178. For many years there were many regulatory and administrative impediments to foreign investment in Bangladesh. See Rahman, *Domestic Application*, *supra* note 120, at 55 (noting the governmental corruption and the impediments created in the pursuit of equality and democracy). These impediments most likely prevented the Bangladesh government from seeking assistance from the WTO.

179. See generally World Trade Organization, The WTO, [http://www.wto.org/english/thewto\\_e/thewto\\_e.htm#TechCoopAndTraining](http://www.wto.org/english/thewto_e/thewto_e.htm#TechCoopAndTraining) (last visited Nov. 21, 2006) (organizing global trade and describing the possible avenues for developing nations to obtain a spot on the global market).

180. See CONSTANTINE MICHALOPOULOS, DEVELOPING COUNTRIES IN THE WTO 153 (2001). From the time the WTO was established there was “growing appreciation of the importance of observing international rules in the conduct of trade as well as the need to safeguard trading interest through effective participation in the activities of the new or-



make the existing assistance programs mandatory, thereby creating additional protections for displaced workers. Mandatory assistance will force developing nations to seek the most favorable method of adjusting to the changing market.<sup>181</sup> The mandatory assistance will also encourage faster solutions, and nations will be able to provide more effective and immediate protections for displaced workers.<sup>182</sup>

Towards that end, developing nations should be *required* to take the training courses, seminars, and workshops available through the WTO.<sup>183</sup> These courses, offered to nations' government leaders, provide necessary tools for developing nations to pursue the most advantageous method of implementing change.<sup>184</sup> The courses should provide counseling regarding the best economic policies to promote diversification, easy adjustment to free trade, and methods for attracting foreign investment.<sup>185</sup>

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ganization." *Id.* See also World Trade Organization, Activities of WTO Technical Cooperation, [http://www.wto.org/english/tratop\\_e/devel\\_e/teccop\\_e/teccop\\_act\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/teccop_e/teccop_act_e.htm) (last visited Aug. 23, 2006) [hereinafter Activities of WTO Technical Conference].

181. Economists suggest that the market will eventually provide a solution. For example, critics argue that:

The Chinese government may decide that it does not want to be seen primarily as a source of cheap clothing, and thus may force factories to raise prices and aim at a higher segment of the market . . . This would ensure that big companies like Wal-Mart and other would maintain a strong presence in places like Bangladesh and Cambodia.

Tracie Rozhon, *A Tangle in Textiles*, N.Y. TIMES, Apr. 21, 2005, at C2. Even so, nations must seek assistance in adjusting to the change in order to maximize the use of their resources.

182. Outside, experienced assistance should provide better economic policies to developing nations who are unable to seek out help independently. Furthermore, better economic policies will promote integration into the market, thereby providing jobs for displaced workers.

183. WTO Training Courses, *supra* note 176.

184. The WTO offers seminars, workshops, technical missions, briefing sessions, and technical cooperation in electronic form. See Activities of WTO Technical Cooperation, *supra* note 180.

185. "Least developed countries require . . . increased external resources to generate employment, especially for women," such as those who are displaced from the textile industry. Press Release, U.N. General Assembly, Speakers Stress Need to Help Developing Countries Build Human Resources, Jobs, Business Skills for Women as Second Committee Takes up Poverty Eradication, U.N. Doc. GA/EF/3130 (Nov. 14, 2005), available at <http://www.un.org/News/Press/docs/2005/gaef3130.doc.htm>. For example, one of the most beneficial methods of immediate assistance is microfinancing. Microfinancing is a process where institutions "of various types provide small loans in the order of several tens to several hundreds of dollars." MICHAEL KLEIN & BITA HADJUMICHAEL, THE PRIVATE SECTOR IN DEVELOPMENT: ENTREPRENEURSHIP, REGULATION, AND COMPETITIVE DISCIPLINES 84 (2003). For an account of microlending in Bangladesh, see

These courses should help nations learn to use the available resources and find industries in which they can gain a market share. In addition, by helping nations diversify their economies, courses will better prepare nations for market shifts in the future, thereby insulating citizens' economic right to work.<sup>186</sup>

Nations should also be required to provide proof to the Committee governing the ICESCR of courses taken and the resulting protections that are implemented for displaced workers.<sup>187</sup> More consistent monitoring will ensure compliance with the ICESCR, and it will also provide documented progression for the benefit of the WTO and other nations.<sup>188</sup>

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Hal R. Varian, *Economic Scene; In a Model for Lending in Developing Nations, a Bangladesh Bank Relies on Peer Pressure for Collateral*, N.Y. TIMES, Nov. 22, 2001, at C1.

[Microfinancing directly assists poor individuals by providing] a small credit line to finance a small business. These "Grameen Banks" have been particularly beneficial to poor rural women who could not normally qualify for a bank loan. Instead of dispersing the loans to one woman, the banks have, instead, given the loans to groups of women who "exert pressure for repayment" on one another. With these loans, poor [workers] have the once inconceivable option of starting their own businesses and, thus, taking an active role in the economic future of the country.

Cristina N. Campanella, *The United Nations' New Approach to Human Development and Poverty*, 17 N.Y.L. SCH. J. HUM. RTS. 951, 954 (2001).

In fact, in October 2006, "a Bangladeshi economist, Muhammad Yunus, was awarded the Nobel Peace Prize for establishing microcredit on a widespread basis in his poverty-stricken South Asian country starting in the 1970s, and for inspiring its spread to other countries." Joseph P. Fried, *From a Small Loan, a Jewelry Business Grows*, N.Y. TIMES, Nov. 12, 2006, § 10 (Job Market), at 1. For a full description of microcredit in Bangladesh, see SHAHIDUR R. KHANDKER, *FIGHTING POVERTY WITH MICROCREDIT: EXPERIENCE IN BANGLADESH* (1998). Despite microcredit's success, many microlending institutions have experienced resistance from the Bangladeshi government. For example, the Bangladesh Rural Advancement Committee (BRAC) has been working in Bangladesh to provide 3.5 million women with microcredit. Yet, many "businesspeople have accused BRAC of elbowing in on their fields, especially banking. The government has accused another large group, Proshika, of political partisanship and . . . held up \$40 million in donor funds while it investigates." Waldman, *supra* note 87.

186. Diversification will prepare nations for future market shifts because they will not be focused on only one industry. See GLOBAL TRADE, *supra* note 1, at 175. See also *supra* note 28 and accompanying text.

187. ICESCR, *supra* note 91, art. 16. See also *Economic Committee*, *supra* note 127 (addressing reporting and implementation of the ICESCR). The reporting requirement of the ICESCR should not be reduced or eliminated. To the contrary, it should be upheld and further promoted to ensure nations' compliance.

188. See *Economic Committee*, *supra* note 127. The documented progression will provide a means for analyzing which programs are offering valuable assistance to developing nations and it will also provide a basis for comparison with other nations so that economic policies can be harmonized.

In addition, the provision must offer protections and incentives to nations when negotiating the rules of trade conduct. For example, when nations are negotiating, the provision can provide a presumption in favor of developing nations who are experiencing significant loss. If a developing nation requests a limited tariff reduction and another nation requests additional tariffs, the provision will provide the measures in favor of the developing nation.<sup>189</sup>

To illustrate, America's remaining textile producers and clothing manufacturers protested certain liberalization measures, asking for continued tariffs in order to contain the surge of cheap imports from other nations.<sup>190</sup> However, "the least developed countries want [greater tariff reduction], notably a fixed date by which rich countries would move to allow duty-free, quota-free imports in 100 percent of their categories. Rich countries have only been willing to set this as an eventual goal."<sup>191</sup> To accomplish the goals for developing nations and displaced workers set out above, the developing nations should win in this debate and receive the date at which tariffs will be eliminated. In exchange, the requesting nations must provide documented proof to both the WTO and the Committee of measures taken to use the tariff to promote diversification or foreign investments.<sup>192</sup> The measures requested from developing nations, however, must conform to the WTO's rules on liberalization, and nations cannot seek unreasonable protectionist measures that would impede free trade.<sup>193</sup>

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189. World Trade Organization, Understanding the WTO: Developing Countries; Some Issues Raised, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/dev4\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev4_e.htm) (last visited Nov. 21, 2006). Developing nations share common interests in the textile and apparel industries. Therefore, the provision can institute policies which assist all developing nations involved in the WTO.

190. See Rozhon, *supra* note 181.

191. Keith Bradsher, *Trade Officials Haggle on Issues from Lower Tariffs to Cotton Subsidies*, N.Y. TIMES, Dec. 17, 2005, at C2.

192. Documentation will encourage proper use of resources. Nations are often unable to adequately implement changes because of inexperience. Furthermore, "[u]ncertainty surrounding [developing] countries' treatment of direct foreign investment creates an unfavorable climate for investment in LDCs." Patricia McKinstry Robin, *The Bit Won't Bite: The American Bilateral Investment Treaty Program*, 33 AM. U. L. REV. 931, 935 (1984). If the developing nations are monitored, the investments will be properly utilized. See *id.*

193. For example, the WTO permits tariffs. See TAR: What Is Market Access, [http://www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto02/wto2\\_45.htm#note2](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto02/wto2_45.htm#note2) (last visited Nov. 21, 2006). A developing nation, however, should not be permitted to pursue security through reinstating quotas that were phased out by the MFA.

## VI. CONCLUSION

In the pursuit of free trade, nations have experienced extreme gains and losses, and many economists consider the losses to be a necessary part of advancement. The detrimental effects faced by displaced workers, however, cannot be overlooked and regarded as an insignificant byproduct of the pursuit of liberalization. This byproduct is not only a human struggle; it is a struggle of people who are protected under international law. Displaced workers have a legal right under the ICESCR, and this right must be promoted to the maximum extent possible.

Therefore, despite the problems with ICESCR enforcement, developing nations must be accountable for their economic choices and offer protections for their citizens through the opportunities that trade provides. Industries have shifted and nations' economic decisions will determine the future of their economic development and their ability to utilize foreign assistance. The proposed solution requires that nations, like Bangladesh and other affected nations, acknowledge their citizens' right to work, and implement change without sacrificing the nation's resources. Only then will nations be in compliance with the ICESCR.

Displaced workers' rights, however, cannot come at the expense of free trade development. Free trade must be promoted as displaced workers' rights are simultaneously protected. Towards that end, any measures taken must help nations adapt to the future of trade, rather than impede the progress of liberalization.<sup>194</sup> This Note's proposed solution of requiring participation in assistance programs and presumption in favor of developing nations also avoids the difficulties surrounding protectionist measures and quota restrictions which impede liberalization. Such protectionism injures all trading partners, impedes the growth of the global

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194. Free trade is essential to the progression of the global economy and the long-term economic stability for developing nations. See, e.g., Daniella Markheim, *Just the Facts: Debunking Some Myths About DR-CAFTA*, WebMemo (The Heritage Foundation, Wash., D.C.), June 16, 2005, available at <http://www.heritage.org/Research/TradeandForeignAid/jtf5.cfm> (citing the benefits of free trade). Trade "stimulates growth, improves investment and job opportunities, and leads to rising living standards . . . farmers, manufacturers, banks, and other service providers will become more competitive, have access to new markets, and benefit from stronger protection of property rights." *Id.* Participating nations will be able to "develop and modernize their economies. This, in turn, will generate greater demand for U.S. goods and services." *Id.* "[C]ountries adopting freer trade policies experienced higher average growth (2.8 percent) between 1995 and 2003 than countries that did nothing (2.4 percent) or that reduced their openness to trade (1.4 percent)." *Id.* (citing Index of Economic Freedom 2005).

economy, and injures the greater potential for securing the right to work in the future.<sup>195</sup>

The proposed solution acknowledges that human rights and economics may sometimes present conflicting interests but maintains that the two need not be separated. Economics is a powerful resource, with an enforceable body supporting its growth. Although it cannot always provide immediate solutions for individuals, it provides the most effective method for pursuing enduring solutions for protections of economic rights. Rather than divide economics and human rights, WTO nations will find they have a powerful tool for assisting developing nations pursue economic security, which will thereby secure the economic rights guaranteed to their citizens under international law.

*Aleah Borghard\**

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195. Protectionist measures are not effective because they hurt both the nation implementing the measure and the nation against which the action is taken. *See, e.g.*, FIDELIS EZEALA-HARRISON, THEORY AND POLICY OF INTERNATIONAL COMPETITIVENESS 23 (1999) (“[I]t must be stressed that protectionist measures amount to implementation of uncompetitive actions . . . . Thus, the adoption of trade protectionist measures are apt to reduce the relative international competitiveness of a country.”); Edward L. Hudgins, *The Fundamental Freedom to Trade*, in FREEDOM TO TRADE (Edward L. Hudgins ed., 1997), available at <http://www.freetrade.org/pubs/freetotrade/chap1.html> (“What is needed today is a refutation of new protectionism. Americans should understand that, as the world economy becomes more integrated, only free trade internationally and free markets domestically hold the promise of increasing living standards and productive job opportunities in the future.”).

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